141 "If any section or provision of this act shall be found invalid by any court, it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section or provision, and the act as a whole shall not be declared invalid by reason of the fact that one or more sections or provisions may be found to be invalid by any court." (Laws 1920, ch. 29, sec. 28.)

The rule is familiar that a part of a statute which is unobjectionable in itself may be enforced notwithstanding another part is adjudged unconstitutional, if it appears that the void portion was not an inducement to the enactment of the rest—that the legislature desired the unobjectionable part to become a law irrespective of the validity of the remainder. Here the express declaration disposes of any possible doubt that might otherwise exist as to the legislative intent, and requires the court to give effect to all portions of the statute that do not in themselves violate some constitutional provision. (Sate v. Wilson, 101 Kan. 789, 806, 168 Pac. 679.)

3. No reasons are suggested and none occur to us why the legislature may not authorize the court of industrial relations to conduct an inquiry into conditions existing in the mining field and in furtherance of that inquiry require the attendance of witnesses. Much of the argument in behalf of the defendants is based upon objections to the provisions of the statute undertaking to restrain the conduct of employees in the mining industry and others classified with it. As already indicated the validity of those provisions is not and could not be involved here. It is elementary that a statute can be attacked on constitutional grounds only by one whose right as guaranteed by the constitutional provision invoked is being assailed under color of the statute. The defendants in their character as witnesses whose attendance before the court is sought in order that they may give information concerning the subject of inquiry, have no stand-
142 ing to question the validity of any provisions of the statute other than those directly involved, for they could suffer no possible injury therefrom in this proceeding. The constitutionality of a statute is inquired into by a court no further than is necessary to a determination of the case before it. These familiar principles preclude any consideration at this time of most of the objections to the judgment upon the constitutional grounds which the defendants first urged, then withdrew, and later renewed. Counsel for the state have shown a readiness to meet upon the merits the objections made to various provisions of the statute, but until these provisions are attacked by some one competent to question their validity—by some one whose rights in respect to the subject matter of the litigation are injuriously affected by them—any expression of opinion by the court would be dictum.

4. It is suggested that the evidence did not warrant a finding that the defendants had refused to testify. It was shown without contradiction that after they had been served with an order of the district court to appear forthwith before the court of industrial relations

to give their testimony they were in another room of the building where that court was sitting and told the sheriff, who came to them on account of an inquiry by the presiding judge, that they were having a little meeting of their own and would be through in about ten minutes; that they did not then appear and at no time showed any disposition to obey the process; that the defendant Howat said they wouldn't come unless they were taken. Any defect that may exist in the way of formal proof on the subject is rendered entirely immaterial by the objections the defendants are still urging to the validity of the law and by the fact that as already stated they were committed only until such time as they should submit to be sworn and testify, so that they could at any moment have obtained their liberty by signifying their willingness to do so.

5. The occasion for the aid of the district court being invoked to require the attendance of witnesses before the court of industrial relations arises from the well understood fact that the latter body in spite of its name is an administrative and not strictly a ju-
143 dicial tribunal and is therefore regarded as incapable of enforcing its own process. (In re Sims, Petitioner, 54 Kan. 1, 37 Pac. 135; In re Huron, 58 Kan. 152, 48 Pac. 574.) The defendants argue that the district court under the statute is without authority to compel the attendance of a witness before any other tribunal than itself. The industrial court act however contains this provision:

"In case any person shall fail or refuse to obey any summons or subpœna issued by said court (of industrial relations) after due service then and in that event said court is hereby authorized and empowered to take proper proceedings in any court of competent jurisdiction to compel obedience to such summons or subpœna." (Laws 1920, ch. 29, Sec. 11.)

We interpret this language as authorizing the procedure here followed—the issuance and service of an order by the district court requiring the defendants to appear before the court of industrial relations, and their commitment for contempt for refusing to obey that order. The district court being one of general jurisdiction is obviously a proper tribunal to which to apply for the needed aid and the method pursued is one naturally adapted to the end sought. The constitutionality of the provision quoted has not been challenged except by an objection relating to the title, which will be mentioned later. A similar feature of the federal law relating to the attendance of witnesses before the interstate commerce commission has been upheld against the contention that the action of a court in requiring a witness to appear before an administrative body was nonjudicial. (Interstate Commerce Commission v. Brimson, 154 U. S. 447, 155 U. S. 1.) The arguments upon both sides of that question are so fully set out in the opinions cited that further discussion is regarded as unnecessary. We hold the provision to be valid.

6. The defendants suggest that they are protected by the guaranty of the state constitution against a witness being required to incrimi-

nate himself (Bill of Rights, sec. 10), because they were among the persons named as interested in the controversy which was the basis of the investigation instituted by the industrial court. It cannot be said that any question that might be put to the defendants as witnesses would necessarily call for a reply tending to incriminate them. Until they had appeared and some question had been
144 asked there could be no basis for forming a judgment as to whether or not they were entitled to refuse to answer.

7. The point is sought to be made that the governor had no authority to call the special session of the legislature at which the industrial court act was passed, because no extraordinary occasion therefor existed. The governor is the final judge of that question. (Farrelly v. Cole, 60 Kan. 356, 56 Pac. 492.)

8. The title of the act under consideration reads: "An Act creating the Court of Industrial Relations, defining its powers and duties and relating thereto, abolishing the Public Utilities Commission, repealing all acts and parts of acts in conflict therewith, and providing penalties for the violation of this act." The contention is made that this is insufficient and the provision of the state constitution with reference thereto (Art. 2, sec. 16) is therefore violated because the title refers to a court, and the body undertaken to be created is not judicial in its character. The word court is often employed in statutes otherwise than in its strict technical sense, and is applied to various tribunals not judicial in their character. Instances may be found in Words & Phrases Judicially Defined, of which an illustration is Aldrich v. Aldrich, 49 Mass. 102, 106.

The provision of the act already quoted, authorizing the district court to aid in requiring the attendance of witnesses before the industrial court is objected to as foreign to the title. The title includes the words—"An act creating the court of industrial relations. * * * and relating thereto." The provision in question certainly has relation to the new tribunal and is pertinent to the subject expressed. Other objections are made on the ground that the title is too restrictive. We think them not well taken, but as the provisions to which they relate could be disregarded without affecting the result of the present case we deem it unnecessary to set them out.

The act (sec. 2) undertakes to confer upon the court of industrial relations the powers previously vested in the public utilities commission, which it succeeds. It is argued that this method of legislating violates the provision of the section of the constitution
145 already referred to which forbids the revival or amendment of a law unless the new act contain the entire act revived or the section or sections amended. This provision however does not prevent legislation by reference (State v. Shawnee County, 83 Kan. 199, 110 Pac. 92) and the objection is not sound.

It is contended that the act is void because executive, legislative and judicial functions are commingled in the grants of power to the court of industrial relations, within the authority of State v. Johnson, 61 Kan. 803, 60 Pac. 1068. The opinion in that case was written while the principles controlling the place in government of

dministrative boards was in the process of development. It is pos-
ible that language may have been there used which might require
me modification before its acceptance as having universal applica-
on. But the vital grounds upon which the statute there considered
as held void do not exist here. The present law bears internal evi-
ence of having been drawn with a view to avoiding the features of
he court of visitation act upon which the decision cited was based.
The function of a tribunal of the general character of the court of
ndustrial relations has become so fully recognized that we do not
egard it as necessary to undertake a review of the subject at this
me. (6 R. C. L. 179.)

9. It is urged that the following provisions of the act are invalid
or the reasons indicated:

That authorizing proceedings in the supreme court to enforce com-
liance with the orders of the court of industrial relations, in which
ew evidence may be admitted (sec. 12), because this amounts to an
ttempt to enlarge the original jurisdiction of the former body;

That authorizing the supreme court to compel the court of indus-
rial relations under certain circumstances to enter just, reasonable
nd lawful orders (sec. 12), because this undertakes to confer legis-
ative power on the supreme court;

That authorizing the court of industrial relations to modify the
erms of contracts of employment which are found to be unfair,
njust or unreasonable (sec. 9), because it violates the 14th amend-
ment to the federal constitution.

46 That forbidding the discharge of an employee because of
his testifying before the court of industrial relations, or bring-
ng to its attention any matter of controversy between employers and
mployees (sec. 15), for the same reason;

That requiring employers to keep a record of wages paid (sec. 23),
or the same reason;

That forbidding employees to conspire to quit their employment
or the purpose of interfering with the operation of the industry
sec. 17), for the same reason;

That forbidding a conspiracy to do injury to others by picketing
n account of anything done by the court of industrial relations, or
nder its orders, or of its aid having been invoked (sec. 15), be-
ause it involves a denial of free speech.

We think it obvious that none of these matters are involved in the
resent case.

10. Finally it is contended that the act is void as an attempt to
nterfere in matters of purely federal jurisdiction—that the national
overnment has so fully occupied the ground attempted to be covered
y the industrial court law that there is no field left in which the
atter may operate. The agencies which the defendants regard as
ringing about this result are:

The entrance into an interstate contract between the international
fficers of the United Mine Workers of America and the representa-
ives of the Coal Operators Association of the United States at the
onclusion of the coal strike a little over six months ago;

The appointment by the president of a commission to hear an
determine matters of hours, wages and conditions in the mining i
dustry in the United States;

The Clayton act (38 U. S. St. at L. 730), relating to unlawf
restraints and monopolies in interstate commerce, particularly th
portion thereof (sec. 20) which forbids federal courts to grant injun
tions against certain conduct of employees, of which ceasing to pe
form work is an illustration, and which declares that such condu
shall not be held to be violative of any law of the Unite
States;

147 The Lever Act (40 U. S. St. at L. 276) providing for go
ernmental control of the production and distribution of foo
and fuel until the termination of the war.

It is quite possible that the scope of the authority of the court
industrial relations may be limited in some respects by these age
cies—that a particular order made by that body might be found
be ineffective, for instance, because in conflict with some lawful ord
of a federal officer or body, or because constituting an undue inte
ference with interstate commerce. We think it too clear to requi
elaboration that whatever restrictions may thus be placed on loc
action it cannot be true that the state has no power to conduct inve
tigations along at least some of the lines indicated and to attempt th
remedy of certain classes of abuses that may be found to exist. Th
suggestion is made that the court should take judicial notice of a
injunction granted against the defendant Howat by a federal cour
and of a number of matters in connection therewith, and that th
judgment of the district court in the present case should be revers
by reason thereof. We are unable to discover that anything in th
facts recited either disqualifies the defendants as witnesses or giv
them any immunity from testifying. It would be utterly futile i
a proceeding the sole purpose of which is to require obedience to
subpœna to undertake to determine in detail the effect and validit
of the various provisions of the statute attacked—to attempt to ind
cate in advance as an abstract matter what decision will be mad
when an actual controversy shall arise in which the rights of th
parties depend upon the soundness of the graver propositions of la
that have been advanced by the defendants.

The judgment is affirmed.

All the justices concurring.

A true copy.

Attest:

____ ____,

Clerk Supreme Court.

148 Be it further remembered, that on the 9th day of Septe
ber, 1920, there was filed in the office of the Clerk of th
Supreme Court of the State of Kansas, a Petition for a Re-Hearin
prepared by the appellants herein, which Petition for a rehearing
in the words and figures as follows, to-wit:

149 Filed August 9, 1920. D. A. Valentine, Clerk Supreme Court.

In the Supreme Court of the State of Kansas.

No. 23013.

THE STATE OF KANSAS, Appellee,

vs.

ALEXANDER HOWAT et al., Appellants.

Petition for Rehearing.

It will be remembered that on July 19th, 1920, by an opinion delivered by Mr. Justice Mason, the above entitled case was decided by this Court and the judgment of the lower court was affirmed.

The decision being adverse to these defendants, they are filing this, their petition for a re-hearing in said cause, for the reasons set out herein. The Court will remember that as the case in this court approached the date of hearing, applications were made for a postponement. These were denied. The Court will further remember that this cause was advanced on the docket and was required to be submitted at a much earlier date than if the case had taken its turn on the docket. It was for this reason that the several attorneys engaged in this suit were unable to arrange a due preparation for a proper presentation of the matters involved in this controversy to this Court. This is especially true of the writer, who submitted a supplementary brief on July 17th. We therefore submit that upon these grounds alone, even if there were no other reasons to be advanced, in order to permit a more complete presentation of the matters in controversy here, this petition for re-hearing should be granted.

However, we think that there are many other reasons which should impel this Court to reconsider its opinion and we hasten to set out each in its turn:

150

I.

In deciding that the act creating the Court of Industrial Relations did not violate Article II, Section 10, of the Constitution of the State of Kansas, the court has overlooked certain previous decisions of this court.

It is provided by the Constitution of the State of Kansas that no law shall be revived or amended unless the new act contains the entire act revived or the section or sections amended. The Act, creating the Court of Industrial Relations, in section II, provides in part as follows:

"All laws relating to the powers, authority, jurisdiction and duties of the Public Utilities Commission of this state are hereby adopted etc."

The opinion of the Court in this case refers to this section as legislation by reference. We feel that in this instance this Court has not properly construed the authority of previous cases decided by this Court and especially the case cited by this Court (State vs. Shawnee County, 83 Kansas 199) as authority for such legislation. The legislation under consideration in State vs. Shawnee County, did not attempt to amend or re-enact any previous law. It merely provided that certain classes of municipal corporations might do certain things. It provided specifically what they were to do and only referred to the existing law to determine who should come within the new act. It did not disturb, in any wise, the law to which it referred, as was said by Mr. Justice Burch in Shawnee County case supra:

"Every one of its provisions remains in full force for the accomplishment of every purpose for which it was originally designed."

The Court of Industrial Relations Act, in Section 3, contains an example of proper legislation by reference. It provides in part as follows:

151 "The operation of the following named and indicated employments, industries, public utilities and common carriers are hereby determined and declared to be affected by the public interest * * * (5). All public utilities as defined by Section 8327 and all common carriers as defined by Section 8330 of the General Statutes of Kansas of 1915."

It is this legislation by reference that is approved in such decisions as the State vs. Shawnee County, and I have set out the above quotation from the Court of Industrial Relations Act to illustrate the tremendous difference between such reference and the re-enactment of a prior law as is attempted to be done in Section 2 of the Court of Industrial Relations Act. First the Public Utilities Commission is abolished. This is clearly, by implication at least, a repeal of the statutes respecting this commission. Then comes the sweeping re-enactment by the mere statement that all of these laws are adopted and are to be read into this act. We think, therefore, that the State vs. Shawnee County supra is not authority for this method of legislation and we respectfully urge this Court that the present opinion, in the instant case, be not permitted to so construe its previous decisions.

It is submitted that this proposition is vital in this case. In the light of the opinion of Mr. Justice Mason, holding that even if all of the other Sections of the act were invalid, the Court of Industrial Relations would be an official body, as the old Public Utilities Commission.

II.

e court has overlooked salient facts in deciding that the act valid despite the fact that the title indicates that a court is established in the body of the act.

applying the name "Court" to this tribunal, the framers of et were not acting without their own reasons. The term "com-n" and its like are not popular with the people of the State nsas. The presiding Judge of the Court of Industrial Rela- in an address before a joint meeting of the Bar Association he Commercial Club of Kansas City, Missouri, declared that ithet "damn" had been applied so frequently to the Public es Commission that he had no doubt that there were many s who had by this time arrived at the conclusion that it was a part of the proper title.

The governor of the State of Kansas has, since the passage of this act, made many addresses in various parts of the y, and before the legislatures of various states, speaking in of this tribunal. He has sought with a zeal which is no commendable, to popularize this so-called court and he has public addresses referred to said tribunal always as a court. aking before the Kewanee Club of Kansas City, shortly after actment of this law, the governor touched upon the constitu-ty thereof, which was then, as now, a question in the minds reat many, and stated that there was a constitutional authority e enactment of this law, for the Constitution provided that liciary of Kansas should consist of a Supreme Court and such ourts, inferior to the supreme court, as the legislature might, ime to time, ordain and establish.

mis-naming of this act, we submit, is a deliberate attempt lead both the legislators and the people of the state as to e character of the tribunal therein sought to be erected. The nd confidence of the people of this state in its courts is well ized and equally well recognized is the justifiable lack of f the people of this state in boards and commissions. The f Industrial Relations should not be permitted to borrow the of prestige and repute which now rests, well earned, upon rts of this state. The spirit and letter of the Constitution has agrantly violated. In none of the definitions of a Court, set "Words and Phrases Judicially Defined," was there a consti-l provision such as this under consideration.

ich vs. Aldrich, 8 Metcalf (Mass.) 102, cited by the Court, holds that a Board of Assessors is a Court within the mean-the Statute of the State and no constitutional provision is nder consideration. But even in that case, it is said, "But er may be the strict technical meaning of the word "court," not doubt that a Board of Assessors was intended to be in-by that term." We respectfully submit that the Massa-

chusetts case, just cited, should not be given the weight of a Kansas authority on this proposition.

153 We respectfully submit that the Supreme Court of Kansas has not given just and proper weight to this objection, advanced by the defendants and we respectfully urge the Court to grant a re-hearing to the end that this matter may be more fully and completely presented by counsel and given further consideration by this Court.

III.

The court, in deciding that the section of the court of industrial relations law relating to the district court is valid, has overlooked previous well-established decisions of this court. We do not think that the Supreme Court has properly understood the objection made by the defendants to the validity of that section of the court of industrial relations act granting jurisdiction to the District Court to compel the attendance of witnesses before the Court of Industrial Relations.

The jurisdiction of the District Court to make such an order as was made in this case is clearly not inherent in such court. Neither the power to make the order nor the procedure provided in the Court of Industrial Relations Law is warranted without reference to this new act. It is contended therefore that part of this act viz Section 11, is devoted to a subject which is not described in the title to the act. This subject relates to the courts of the state and to special civil procedure and we submit that there is nothing in the title to this act which would lead any one to believe that in the body of the act any part of the civil procedure of the State of Kansas had been altered or in any wise added to. We think that in deciding that this section is described in the title "An Act creating the Court of Industrial Relations and Relating thereto" is a sufficient expression of this subject. This court has overlooked and failed to consider previous decisions of this court among which are the following:

The Statcute in question in State vs. Lewin, 53 Kans. 679, was entitled "An Act in Relation to the State Penitentiary". Section 28 of the Act provided that if a prisoner attempted to escape he should on information filed by the Warden of the Penitentiary, be taken before the District Court of Leavenworth County. The Court in holding that section of the statute unconstitutional, said, we think, it (the statute) void under section

In the instant case the statute is entitled "An Act creating the Court of Industrial Relations * * * and relating thereto"

The Act authorizes and empowers the Court of Industrial Relations "to take proper proceeding in any court of competent jurisdiction to enforce obedience to such summons or subpoena." The Supreme Court holds in the instant case, "The provision in question certainly has relation to the new tribunal

, Article 2, of the Constitution
ause under an Act entitled
An Act in relation to the state
penitentiary" it attempts
4 to establish a system of
special criminal procedure
Leavenworth county for a
ecial class of offenses and un-
rtakes to confer on the warden
the penitentiary the functions
a prosecuting officer in that
urt. This is clearly outside the
ope and purview of the title."
e Commissioners of Sedgwick
unty vs. Baily, 13 Kans. 607,
s an act defining certain boun-
ries of counties. Section 6 pro-
ded that the territory detached
om Sedgwick and made a part
Harvey County shall not be
lieved from its obligations to
y its proportion of all in-
btedness of Sedgwick County.
The Court held the section
nconstitutional, saying, "Who
ould think of looking for any
nd of assessment under such
itle.

Swaze v. Britton, 17 Kans.
5, had under consideration an
t entitled, "An act relating to
taries public." The act in
e of its sections went on to
ovide that in case of protest
commercial paper, notice of
otest might be given by no-
ries public in a certain man-
r. The Court held that this
ovision of law was not ex-
ssed in the title of the act.

and is pertinent to the subject expressed.

The Court of Industrial Relations Act is open to the same objection with respect to the section under consideration, and we might well say, "Who would think of looking for a change in civil procedure under such a title?"

The instant case has reference to a law which relates to the Court of Industrial Relations; Section 11 relates to a subject of civil procedure and to district courts and creates a new and special procedure and confers a new power upon the court.

In view of the foregoing decision, it seems clear that the Court Industrial Relations Law, insofar, at least as Section 11 is con-rned, is not clearly expressed in the title, and the opinion of the urt in holding it valid, is directly opposed to prior decisions of is court and that a re-hearing should therefore be granted in is case so that the prior decisions of this court should be given rther consideration.

IV.

The Court, in deciding that the Clayton Act, (38 U. S. Statutes at large, 730) and the Lever Act (40 Statutes at large, 278) did not affect the present controversy, has misconstrued these acts of Congress.

It is elementary that where the Federal Government has exercised control in cases within its jurisdiction that the state, while at liberty to legislate prior to the assumption of control by the Federal Government, is thereafter precluded. A comparison between the Lever Act and the Clayton Act, and the Court of Industrial Relations Act, will demonstrate that these subjects are considered.

155 Section 20 of the Clayton Act provides, "And no such restraining order or injunction shall prohibit any person or persons, whether single or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceable assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to

The Court of Industrial Relations Act provides, "it shall be unlawful for any such individual employee or other person to conspire with other persons to quit their employment or to induce other persons to quit their employment for the purpose of hindering, delaying, interfering with, or suspending the operation of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act, or for any person to engage in what is known as "picketing", or to intimidate by threats, abuse, or in any other manner any person or persons with intent to induce such person or persons to quit such employment, or for the purpose of deterring or preventing any other person or persons from accepting employment or from remaining in the employ of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act."

be violations of any law of the United States. (38 Stat. L. 738)".

The Lever Act provides in part as follows: "Sec. 9. (Conspiracy to restrict supply of necessaries, etc.) That any person who conspires, combines, agrees, or arranges with any other person (*a*) to limit the facilities for transporting, producing, manufacturing, supplying, storing, or dealing in any necessaries; (*b*) to restrict the supply of any necessaries; (*c*) to restrict the distribution of any necessaries; (*d*) to prevent, limit, or lessen the manufacture or production of any necessaries in order to enhance the price thereof shall, upon conviction thereof be fined not exceeding $10,000 or be imprisoned for not more than two years, or both. (— Stat. L. —.)"

The comparison above will, I think, be amply sufficient to show this Court that the Kansas Legislation respecting the subject of strikes and picketing has come within the power of the Federal Government and that such exercise of that power as Congress has thought proper has been put forth in the sections above set out.

156 The syllabus of the opinion rendered in this cause is by the court and is therefore an integral part of the opinion of the court and is entitled to as much weight as any other portion of the opinion.

Syllabus one erroneously decides that the legislature can create an administrative body and empower it to investigate conditions in the mining industry and make regulations to insure continuity of production.

By this statement the court permits the legislature to confer upon an administrative body a most extensive legislative power, the power to make rules and regulations to enforce the continuity of production in certain industries. Since it is fundamental that the law making power may not clip itself of one iota of its law-making power by a voluntary delegation of any element of it, the power to enforce the continuity of production conferred upon the Court of Industrial Relations must be found in the act creating said court.

The assertion of the power of the court of Industrial Relations to

enforce continuity of production is upheld as a proper assertion on the part of the legislature of the police power vested in said body. If we concede that it is within the power of the legislature to make rules and regulations to enforce the continuity of production, it nevertheless follows that this power must be exercised in a legal, lawful and constitutional manner, and in no way infringe or violate the rights of the wage earners of the State of Kansas as those rights are protected and safe guarded by the constitution of the State of Kansas and the Constitution of the United States.

The question then arises:

Can the Legislature enforce continuity of production in the manner and form attempted in the Court of Industrial Relations Act?

This leads us to the question as to the provisions of the act creating the Court of Industrial Relations for the enforcement of the continuity of production. And it must be remembered that it is under these provisions of the Industrial Court act that the Industrial Court must take action to enforce continuity of production if it is to be enforced according to the power granted said court by the legislature.

The provisions made by the act creating the Court of Industrial Relations for enforcing continuity of production, are:

I.

1561_2

Section 17. "It shall be unlawful for any such individual employes or other person, to conspire with other persons to quit their employment or to induce other persons to quit their employment for the purpose of hindering, delaying, interfering with, or suspending the operation of any of the industries, employments, public utilities or common carriers governed by this act.

II.

Section 17. "It shall be unlawful for any person to engage in what is known as picketing."

III.

Section 9. "If, during the continuance of any such employment the terms or conditions of any such contract, or agreement, hereinafter entered into, are by said court, in any action or proceeding properly before it under the provisions of this act, found to be unfair, unjust or unreasonable, said Court of Industrial Relations may by proper order so modify the terms and conditions thereof that they will be and remain fair, just and reasonable, and all such orders shall be enforced as in this act provided."

IV.

Section 15. "It shall be unlawful for any person, firm or corporation to discharge any employee or to discriminate in any way against any employee because of the fact that any such employee may testify

as a witness before the Court of Industrial Relations, or shall sign any complaint, or shall be in any way instrumental in bringing to the attention of the Court of Industrial Relations any matter or controversy between employers and employees, as provided herein."

V.

Section 8. "The Court of Industrial Relations shall order such changes, if any, as are necessary to be made in and about the conduct of said industry, employment, public utilities or common carrier in the matter of working and living conditions, hours of labor, rules and practices, and a reasonable minimum wage, or standard of wages."

157 Now it is clear that Provision One, as above quoted, prohibits by its terms the collective secession of work by the employees of any industry. And by so providing it violates and destroys the freedom of contract on the part of the employees, guaranteed to them under the 14th Amendment to the Constitution of the United States. This provision is destructive of the employees' right to collectively bargain, as it takes from them the right to refuse to bargain at all, without which they possess no power to enforce their demands. It is in fact a plain prohibition against a strike on the part of the employees of any industry embraced within the terms of this act and is therefore a denial of the well recognized right of employees of any industry to strike or quit work collectively. And, as such it invades the personal liberty as well as the right of property guaranteed under the 5th Amendment to the Constitution of the United States, as well as the 14th Amendment to the Constitution of the United States.

In the case of Adair v. United States, 208 U. S. 441, the court in passing upon the constitutionality of an act of Congress which sought to restrict the rights of an employer to freely contract or to refuse to contract with any particular class of individuals, used the following language:

"Such liberty and right embraces the right to make contracts for the purchase of the labor of others and equally the right to make contracts for the sale of one's own labor; each right, however, being subject to the fundamental condition that no contract whatever its subject matter, can be sustained which the law upon reasonable grounds forbids as inconsistent with the public interests or as harmful to the public order, or as detrimental to the common good."

The court continuing, quoted with approval, Mr. Cooley in his treatise on torts, p. 278, who says:

"It is a part of every man's civil rights that he be left the liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason, or is the result of whim, caprice, prejudice or malice. For this reason neither the public nor third persons have any legal concern. It is also his right to have business

relations with any one with whom he can make contract and if he is wrongfully deprived of his rights by others, he is entitled to redress."

158 Under the provisions of the Industrial Court Act it is plain that the rights of the individuals to voluntarily associate themselves and contract or refuse to contract, if they are unable to contract, in a way that they themselves feel is advantageous, is denied them.

As is stated by Cooley on torts, p. 81.

"The right to refrain from contracting is an absolute right which every man can exercise, justly or unjustly, for a good purpose, 'maliciously' in the proper sense of the term, or benevolently, nor can the absence of commendable motive on the part of the party exercising his rights be the legal substitute or equivalent for the thing amiss which is one of the necessary elements of the wrong."

Thus it clearly appears that the statement that every man whether skilled laborer, mechanic, farmer or domestic, may work or refuse to work, singly or collectively, for any company, or with any individual, at his own option without any explanation as to his refusal. The only limitation there is on this right or that can be legally placed upon this right is the limitation of contract freely entered into by the individual.

As was said in Master Builders' Assn., 16 Colo. Apps. 25; 62 Pac. 782:

"This right is one of which a person cannot be deprived even by the legislature itself."

This provision is therefore in violation of constitutional guarantees to the workers and is therefore an illegal and unlawful method of enforcing continuity of production and has been so held in State v. Haun, 61 Kansas 146; State v. Wilson 61 Kansas p. 32.

Provision II, quoted above, is an unlawful infringement of the right to peacefully picket, which right was specifically recognized by the Federal Congress when, looking to the proper enforcement of this provision of the Constitution it passed the Clayton Act (Act of Oct. 15, 1914, 2 U. S. Comp. Statutes, Ann. 1916, pg. 1964.) which declares the right of peacefully picketing and affirms the right of laboring men to persuade others not to take their places or patronize their employers when they are engaged in a dispute concerning the terms or conditions of their employment. This
159 provision, therefore, for enforcing continuity of production is invalid and unlawful and is without the power of the legislature to exercise or of the courts to enforce.

Provision III, which provides for the revising, regulating and controlling the contracts of employment made by the laboring men of the State of Kansas is again in violation of the provisions of the 14th Amendment to the Constitution of the United States and is pointed out in appellant's brief, p. 24, is an attempt to exercise a power not possessed by the legislature.

As was held by Justice Smith in State v. Haun 61 Kansas 146. Provision No. 3 is again in violation of the 14th Amendment as an attempt to destroy the rights of individuals to contract, collectively or separately, as they may desire, for such wages and compensation as they can secure. This provision, by its terms gives to the Industrial Court the power to fix and regulate the wages of the employee, which action was by the court, in State v. Wilson, 61 Kansas p. 32, held to be invalid and unlawful and in expressing this opinion the court used the following language:

"The court of appeals had no doubt of the invalidity of its provision relating to the regulation of wages. That court said, as we have already stated, we should hold this law to be invaild if it in its terms expressed such purpose, (the regulation of wages) but neither the title of the act nor the act itself directly or indirectly purports to relate to the matter of wages." (See printed brief of appellants, p. 26.)

Provision IV is a further attempt to limit and control the right of contract and to arbitrarily control the discretion of the individual in selecting his employees, which provision is a violation of the 14th Amendment of the Constitution and is in conflict with the adjudged cases of the State of Kansas as is indicated in the case of Coffeyville Vitrified Brick & Tile Co. v. Perry, 69 Ke. p. 297.

It is clear this limitation upon the employer to select for himself his employees by any method or upon any plan that to him may seem proper, is a violation of the freedom of contract, for, as was said by Judge Snyder in the case of State v. Goodwell, 33 Va. 160 170, in considering a question of this nature:

"A person living under the protection of this Government has the right to adopt and follow any lawful and industrial pursuit, not injurious to the community, which he may see fit. And as incidental to this is the right to labor or employ labor, make contracts in regard thereto upon such terms as may be agreed upon by the parties, to enforce all lawful contracts, to sue, to give evidence and to inherit, purchase, lease, sell and convey property of every kind. The enjoyment or deprivation of these rights and privileges constitutes the essential distinction between freedom and slavery, and liberty and oppression. The vocation of employer as well as that of employee is his property. Depriving the owner of property or one of its attributes is depriving him of his property under the provisions of the Constitution."

Again as was said in Purbis v. Local, 500 U. B. of Carpenters and Joiners, 63 Atl.:

"The right of the workman to freely use his hands and to use them for just whom he pleases, upon such terms as he pleases, is his property; and so in no less degree is a man's business in which he has invested his capital. The right of each—employee and employer—is an absolute one, inherent and indefeasible of which neither can be deprived, not even by the legislature itself. The protection of it,

though as old as the common law, has been reguaranteed in our Bill of Rights."

Now since the legislature cannot divest itself of legislative power by conferring such power on a commission, it must be held that such power, methods and means, at the command of the Court of Industrial Relations for enforcing continuity of production, are such powers and means as are specifically set out in the act creating the Industrial Court and none other.

Now since these means of enforcing continuity of production are invalid and unlawful, as shown above, being in conflict with Constitutional provisions, therefore, the decision that the Industrial Court has power to enforce continuity of production is erroneous.

In other words, the Industrial Court cannot enforce continuity of production and the legislature cannot authorize it to enforce continuity of production by methods and means that violate or destroy constitutional rights and liberties. The abstract question as to the right of the Industrial Court to enforce continuity of production is not before the court. The question before the court and the question decided by the court in its decision that the Industrial Court can enforce continuity of production is that the Industrial Court can enforce continuity of production in the manner and form prescribed
in the act creating the Industrial Court. Consequently the
161 decision of the court that the Industrial Court can enforce continuity of production is erroneous, for such decision necessarily includes the finding that the Industrial Court can do all those acts directed by said Industrial Court Act to be done, to enforce continuity of production.

By such a decision the court upholds all provision of the act for enforcing continuity of production, notwithstanding the violation of the Constitution and former decisions of this court.

On the other hand if the court does not so decide it does not decide anything for to decide that continuity of production may be enforced in a lawful manner is to decide that the legal acts of the legislature are lawful.

Therefore, in order that the court may properly and definitely state its decision with respect to the power of the legislature to enforce continuity of production in the manner prescribed by the Industrial Court Act and thereby prevent misconception and misconstruction as to the powers of said court a rehearing should be granted.

162 The court, in holding that section 28 of the Industrial Court Act compels the court to give effect to the valid portions of said act irrespective of whether or not the valid portion would carry out the purpose for which said act was passed, has overlooked important cases binding on this court.

The court has decided that the declaration on the part of the legislature that:

"If any section or provision of this act shall be found invalid by any court, it shall be conclusively presumed that this act would have

en passed by the Legislature without such invalid section or pro-
sion and the act as a whole shall not be declared invalid by reason
the fact that one or more sections or provisions may be found to be
valid by any courts;" (Laws 1920, *Chapter* 29, Section 38);

a provision valid and binding on the court, in determining how far
he invalidity of a portion of the act might affect the remainder.
he court in passing upon this point says,

"The rule is familiar that a part of a statute which is unobjection-
ble in itself may be enforced notwithstanding another part is ad-
udged unconstitutional, if it appears that the void portion was not
n inducement to the enactment of the rest—that the Legislature
esired the unobjectionable part to become a law irrespective of the
alidity of the remainder. Here the express declaration disposes of
ny possible doubt that might otherwise exist as to the legislative in-
ent and required the court to give effect to all provisions of the
tatute that do not in themselves violate some constitutional pro-
ision."

It is clear, under the authorities, and binding on this Court, that
he Court is in error in the above finding in two respects. First, in
olding that such a blanket provision inserted by the Legislature in
bill can thereby supplant the judicial determination by the Court
of the effect of the partial invalidity of a bill on the bill
163 as a whole, or make by the insertion of such a provision the
effect of partial invalidity other or different than it otherwise
would have been had said provision been omitted, or place a mandate
pon the Court which it must obey by declaring enforcible a portion
f an act which, taken alone, would be a nullity if enforced.
Second, that it is the legislative intent, with reference to a valid por-
ion of a bill separated from the invalid portion that determines the
ffect of the invalid part upon the whole act, rather than the relation-
hip of the invalid portion to the valid portion and the possibility of
he two portions to standing alone.

It is clear the court erred in the two respects above named as to
he duty placed upon the Court by the section above quoted, as well
s in respect to the rule governing their decision in determining the
ffect of the partial invalidity of said act. It is fundamental that
t is a matter of judicial determination whether the invalid portion
f an act is such an integral part of the whole as to invalidate the
whole act. And the mere declaration of the Legislature of its intent
r desire cannot compel the Court to give effect to some minor pro-
ision after the body of the act has been held to be invalid.

The Court has, in effect, held in this connection that the Legisla-
ure by its declared intent, has placed a duty upon the Court which
ompels it to give effect to any portion of the act, however insignifi-
ant and however far it may be removed from the real purposes for
which the act as a whole was passed, if said portion is not in itself
bjectionable.

The rule by which the effect of partial invalidity upon a statute as
whole should be determined has been concisely stated by Brewer,

Justice, in the case of C. B. U. P. R. R. Co. v. A. T. & S. F. R. R. Co. 28 Kansas 457, and in passing upon this point, the court said:

"And now we remark in the first place that while it is undoubtedly true that a statute may be constitutional in part and unconstitutional in part, yet as a general proposition it has its limitations. The mere fact that one part, standing alone, would be within the scope of the legislative power does not prove that it can be upheld when coupled with other matter. If such other matter conflicts with the constitution and must fall, then the constitutionality of the first depends upon the extent and closeness of its connection with the second. If the first be conditioned upon the second or it is apparent that the Legislature would not have enacted the first but for the second, that the latter was, as it were, an inducement to the former and that only by virtue of a concurrence of the two would it be presumed that in the judgment of the law-making power, the respective rights of antagonistic parts would be preserved then with the fall of the second falls also the first. It is not enough to say that the Legislature might have legally enacted the first alone. When it has coupled the two together, the failure of the latter invalidates the former; and this for the reason that because of the mutuality of the two, the relation inter esse, the dependence of one part upon the other, the correspondence of blessing and burden, it must be presumed that the one was an inducement to, or a condition of the other."

The rule is similarly stated by Cooley in his work on Constitutional Limitations, page 179, as follows:

"And if they are so mutually connected with and dependent on each other as conditions, considerations or compensations for each other, as to warrant the belief that the Legislature intended them as a whole, and if all could not be carried into effect, the Legislature would not pass the residue independently, then if some parts are unconstitutional or the provisions which are thus dependent, conditional or connected, must fall with them."

them.

Again Ward, et al., v. The Mayer, 2 Gray 84, Chief Justice Shaw speaking for the Supreme Court of Massachusetts, states the rule as follows:

"Yet other parts of the same set may not be obnoxious to the same objections and therefore have the full force of law in the same manner as if these several enactments had not been made by different statutes. But this must be taken with this limitation that the parts so held respectively constitutional and unconstitutional must be wholly independent of each other."

The statement by Justice Brewer of the rule as to the effect of partial invalidity of statutes on the whole act has been cited with approval in Conklin v. Hutchinson, 65 Kansas 584 and again in Te

aph Company v. Austin, 67 Kansas 214. In the latter case the atement of Bartholomew, Chief Justice, speaking for the Supreme urt of North Dakota, in Martin v. Tyler, 4 North Dakota 278. as cited with approval, which statement is as follows:

"It is our duty to sustain statutes in their entirety when possible nd to that we must indulge all the reasonable presumptions in favor f their constitutionality. But when a statute has been once enas- ılated, these presumptions no longer obtain against the Court or ie remainder. It then should be manifestly clear that the remain- ıg portion can stand by itself and that the Legislature did not in- end that such portion should be controlled and modified in its con- ruction and effect by the rejected part."

Now it is clear from the above authorities that it is the duty of the ourt to determine from the provisions of the act itself, the purpose or which it was enacted. Having determined the purpose for which the act was placed on the statute books, how can it be said that the mere declaration by the Legislature contained in the act passed, shall control or govern the decision of the court in letermining whether the invalidity of one portion of the act destroys he purpose for which it was enacted?

In considering the provisions of the Industrial Court Act, we are orced to the conclusion that the act was passed for the following urposes:

First, to investigate industrial conditions.

Second, to prevent collective cessation of labor in industries named.

Third, to abolish picketing.

Fourth, to fix wages and hours.

Fifth, to fix rates.

Sixth, to control working conditions and to enforce its orders and ecrees with respect to the above matters.

Now, can it be said by the wildest stretch of imagination that the Legislature would have passed the Industrial Court Act, if all the above functions enumerated, except the first, were denied it? Or stronger still, if all the above functions were denied it and the pro- vision and the only provision of the act found to be valid is that cre- ating the court. Now under the decision of the court in respect to partial invalidity, the Court would give effect to that portion of the act creating the Court even though each and every function or duty contained in the act was found to be invalid. This in itself shows that the decision of the court in respect to provisions of the act re- lating to partial invalidity is erroneous, for, as the above cited au- thorities clearly show, the purpose of the act must be determined by the Court and it must likewise be determined by the Court whether such partial invalidity as is found to exist destroys the purpose of the whole act, and if so the whole act must fall. It is obvious that the

Legislature did not intend to do a vain thing in passing th
167 Industrial Court Act. Nevertheless, under the holding of th
Court, force and effect would be given to this act, even thoug
it developed that less power and authority is by said act conferred o
the Industrial Court than was formerly possessed by the Utilit
Commission. Assuming the above statement of facts to be tru
could it then be said that a decision of the Court, placing in effe
this act, would be carrying into effect the intention of the Legislatur
their statement that the partial invalidity should not invalidate th
whole act, notwithstanding?

It is apparent that the act as a whole must be considered by th
Court without reference to the provision concerning partial validit
to determine whether there is such inter-dependence between th
valid and invalid portions as to destroy the whole act. Therefor
the court erred in holding that the mere declaration of the Legisl
ture that the invalidity of one or more sections should not affect th
remainder, is controlling, and thereby relieves the Court of the n
cessity of determining the effect of partial invalidity upon that se
tion of the act which is directly involved in the case at bar.

It is clear that the purpose of the Industrial Court Act is in a fair
comprehensive way, stated in the six purposes, above enumerate
and since every one of the sections, giving the power to carry o
these purposes, has been challenged as unconstitutional, the Cou
erred in failing to determine the constitutionality or the unconstitu
tionality of each and every one of these sections. For, since th
inter-dependence and relationship of the valid and invalid portion
of the act is controlling and not the declared intention of the Legis
lature, as the above cited authorities clearly show, the only way
which the Court could determine the validity or invalidity of th
specific section involved in this case would be by determining th
constitutionality of every section challenged. For it is apparent tha
it is impossible to tell whether the invalid or unconstitutiona
168 parts of said act are so numerous or such an integral part
the whole act as to invalidate the entire act, until the invali
part is determined by judicial decision. Therefore, as above state
the court erred in failing to pass on the constitutionality of eve
section challenged and in consequence of this failure, a re-hearin
should be granted.

The holding of the court that the act creating the Court of I
dustrial Relations is not void on the ground that it commingles le
islative, executive, and judicial powers is in conflict with numero
decisions of this court.

The court in Syllabus 8 holds

"The act creating the Court of Industrial Relations is held not
be void * * * on the ground that it commingles in one bo
executive, legislative and judicial functions."

In another portion of the opinion of this court rendered in th
cause the court has declared the Court of Industrial Relations to
an administrative body.

"The occasion for the aid of the district court being invoked to require the attendance of witnesses before the court of industrial relations arises from the well understood fact that the latter body in spite of its name is an administrative and not strictly a judicial tribunal."

It will be conceded we believe, that nothing is more firmly fixed or universally accepted than the absolute necessity for the strict division of the legislative, executive and judicial powers of our government. For as was said by Mr. Justice Allen in re Davis, 58 Kan. 368

"It is not asserted that the constitution does not make a valid and effectual division of the powers of government into executive, legislative and judicial departments, nor is the wisdom of such a
169 division of powers questioned; * * * it has been generally if not universally accepted as the best and safest division of powers yet devised by man, and is recognized as firmly established by all writers on the constitution. * * * The legislature enacts general rules for the guidance of all departments of the government. It levies taxes and directs the expenditures of the money raised thereby, but it executes no law. The judiciary declares the law, and directs as to its application to controversies that arise. * * * The fundamental law embodied in the constitution binds all departments of the government and fixes the limits of their powers. To its mandates all must yield obedience; for it is superior to any and all agencies created under it."

Now the separation of powers being accepted, as it must be, as the law of this state we are immediately led to a consideration of the provisions of the industrial court act, for the purpose of ascertaining whether said act by its terms confers legislative, executive and judicial powers. If so, the act is void, and the holding of this court out of harmony with the former decisions of this court as well as contra to all well considered opinions of all the courts of this country.

Section 9 of the act creating the court of industrial relations reads as follows:

"If during the continuance of any such employment, the terms or conditions of any such contract or agreement hereinafter entered into or by said court in any action or proceeding properly before it under the provisions of this act, found to be unfair, unjust or unreasonable, said court of industrial relations may by proper order so modify the terms and conditions thereof so that they will be and remain fair, just and reasonable."

170 It is clear that the *divisions* of section — convey judicial power. In this one section is conveyed the power to pass upon contracts that have been entered into and to determine whether the terms of said contract are unfair, unjust or unreasonable and in addition to modify by proper order the terms thereof so as to make it "fair, just and reasonable."

For example suppose a contract was entered into by and between the mine workers and the mine operators on May 1st, 1920, and

on May 20th, 1920, the fairness and reasonableness of said contract is called in question by a proceedings properly brought before the court of industrial relations and the court of industrial relations passes on the fairness and justice of said contract and decides its terms are fair and just. By what method of reasoning can it be said that the court of industrial relations has not exercised as plain, clear and unadulterated judicial functions in respect to a judicial question as it is possible for any court to exercise.

By what method of reasoning can it be said that the court of industrial relations by such action was performing an administrative or legislative function? This section does not set out general limitations to govern the making of contracts in the future but expressly conveys to the court of industrial relations the right and power to pass upon the validity of contracts already entered into and to reform or cancel said contract or take such action as will produce substantial justice between the parties or in the words of the statute make said contract "fair, just and reasonable."

That is is a judicial function of the court (exercised by the equity side) to pass upon the equitable nature of a contract when the question of its validity is raised by a demand for reformation or cancellation cannot be doubted, therefore citations of authority in this respect would be entirely out of place.

Section 9, above quoted, and the powers therein conveyed are so similar to those conveyed by section 8 of the act creating the
171 court of visitation that comparison of the two are warranted. Section 8 of the act creating the court of visitation reads:

"The court of visitation shall have power and jurisdiction throughout the state—

1st. To try and determine all questions as to what are reasonable freight-rates, switching and demurrage charges, and other charges connected with the transportation of property between points in the state."

Justice Smith in State v. Johnson, 61 Kan. 814, in declaring the invalidity of the act creating the court of visitation said:

"The first paragraph of section 8 gives authority 'to try and determine all questions as to what are reasonable freight-rates, switching and demurrage charges, and other charges connected with the transportation of property between points in the state.' This, together with other sections, as we shall see, is a grant of judicial power to the court to determine what are reasonable freight-rates for services already rendered."

Now can it be said with the slightest show of reason that the determination of the reasonableness of a freight-rate for services already rendered is any more of a judicial power than the determination of the reasonableness of a contract already entered into.

As is indicated in section 3 of the industrial court act the jurisdiction of said court is not definitely fixed, therefore the very important and fundamental judicial question of determining its own jurisdic

ion is left to the determination of the industrial court. (See Appellants' printed brief, p. 16.)

Now section 12 of the industrial court act provides:

"In the case of the failure or refusal of either party to said controversy to obey and be governed by the order of said court of industrial relations, then in that event said court is hereby
72 authorized to bring proper proceedings in the Supreme Court in the State of Kansas to compel compliance with said order; and in case either party to said controversy should feel aggrieved at any order made and entered by said court of industrial court of relations, such party is hereby authorized and empowered within ten days after service of such order upon it to bring proper proceedings in the Supreme Court of the State of Kansas to compel said court of industrial relations to make and enter a just, reasonable and lawful order in the premises."

If it is held that this action of the industrial court in passing upon the reasonableness, fairness and justness of a contract is a legislative or administrative function and in no manner the exercise of a judicial function by a judicial tribunal then by what theory can the authority sought to be vested in the Supreme Court by Section 12 be maintained.

The power vested by section 12 in the Supreme Court cannot be said to come within any one of the three specific classes of cases. (Art. 3, Sec. 172, Constitution of the St. of Kan.) in which the Supreme Ct. has original jurisdiction. (See Appellants' printed brief, p. 12.)

Since this power cannot be held to come within the original jurisdiction of the Supreme Court it must be appellant jurisdiction, if section 12 is to be given any force or effect whatever.

Now since the action or decision of an administrative body cannot be judicial it is clear that it cannot form a proper basis upon which an appeal can be taken to the Supreme Court. This point was specifically passed upon by Kingman, Chief Justice in Auditor of State v. A. T. & S. F. Ry. Co. 6 Kan. 505, and in passing on said point he used the following language:

73 "It (Supreme Court) has original jurisdiction in three specific classes of cases which it possesses independent of any legislation and such appellant jurisdiction as may be provided by law. The jurisdiction of the court, under this last provision is wholly dependent upon the will of the legislature. It may be enlarged or restricted as the legislature may prescribe but in all its acts the legislature is still under the restriction that the jurisdiction conferred must be appellant not original. The legislature is further restricted to appeals in their nature and essence judicial in their character. It would be absurd to claim that it is in the power of the legislature to clothe this court (Supreme Court) with authority to review acts purely executive in their character by giving an appeal therefrom to this court. * * * Yet when the decision is made an appeal could not be given to this court for that would be giving this court

executive powers as well as judicial—a power as dangerous to good government as it is subversive of the constitution, which has carefully kept separate the executive, legislative and judicial departments of the government, to the end that this may be a government of laws and not of men."

Continuing Justice Kingman said:

"The term then appellant jurisdiction as used in the constitution has some other meaning than that there should be merely an appeal from some decision or act of some officer of the state. The constitution of the United States contains a clause of similar import which has been the subject of comment and decision by the Supreme Court of the United States and the substance of their decision is thus stated by Judge Story in his commentaries on the constitution,
p. 1761. "The essential criterion of appellant jurisdiction is
174 that it revises and corrects the proceedings in a cause already instituted and does not create that cause. In reference to judicial tribunals an appellant jurisdiction necessarily implies that the subject matter has been already instituted and acted upon by some other court, whose judgment or proceedings are to be revised. To operate at all then under the constitution of the United States it is not sufficient that there has been a decision by some officer or department of the United States; It must be one clothed with judicial authority and acting in a judicial capacity."

Crane v. Giles, 3 Kan. 54.

In view of the above it is clear that the decision of the court of industrial relations must be a judicial decision and the court of industrial relations must be a judicial body if the proceeding provided for in section 12 can be had in the Supreme Court. If the decisions of the industrial court are non-judicial no review of the actions of the industrial court can be had in the Supreme Court as provided in Section 12 in which case due process of law guaranteed by the 14th Amendment of the Constitution of the United States is denied and as a consequence the whole act is invalid. If on the other hand the actions of the industrial court are held to be judicial the whole act is void because it unites in one body administrative and judicial functions contrary to the well settled law of the State of Kansas. Therefore under any possible view of the provisions of this act there is a commingling of legislative, judicial and executive functions in consequence of which a rehearing should be granted to the end that the settled law of the country and the state of Kansas may be maintained.

It is also quite clear that the sections referred to in appellant's printed brief on page 43 specifically confer on the court of industrial relations executive power, the power to enforce or carry out the provisions of legislation enacted by the legislative branch of the government. These provisions for executive action for the enforcement of the industrial relations act show a clear direct violation of the constitutional provisions and the law of Kansas
175 as above set out. Therefore, we respectfully urge that a

hearing be granted to the end that the decision heretofore rendered may be harmonized with the former decisions of the State of Kansas and the constitution of said State and the Constitution of the United States.

Respectfully submitted,

REDMOND S. BRENNAN,
Attorney for Defendants.

[Endorsed:] 23013. Copy petition for rehearing.

176 Be it further remembered, that afterwards on the 1st day of September, 1920, the same being one of the regular judicial days of the July, 1920, Term of the Supreme Court of the State of Kansas, said court being in session in its court room in the City of Topeka, the following proceedings among others was had, and remains of record in the words and figures as follows, to-wit:

177 In the Supreme Court of the State of Kansas, Wednesday, September 1, 1920.

No. 23013.

STATE OF KANSAS, Appellee,

vs.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, ROBERT B. FOSTER, and THOMAS CUNNINGHAM, Defendants.

Journal Entry Denying Rehearing.

Now comes on for decision the petition for a rehearing of this cause, and thereupon, it is ordered that said petition for rehearing be denied.

178 In the Supreme Court of the State of Kansas.

No. 23013.

THE STATE OF KANSAS, Appellee,

vs.

ALEXANDER HOWATT, AUGUST DORCHY, THOMAS HARVEY, and ROBERT B. FOSTER, Appellants.

I, D. A. Valentine, Clerk of the Supreme Court of the State of Kansas, do hereby certify that the above and foregoing is a true, full and complete transcript of the record and proceedings had in the above entitled case, and also of the opinion of the court rendered thereon as the same appear on file and remain of record in my office.

In testimony whereof, I have hereunto set my hand and affixe the seal of said court at my office in Topeka, Kansas, this 29th da of September, A. D. 1920.

[Seal of the Supreme Court State of Kansas.]

D. A. VALENTINE,
Clerk of the Supreme Court of the State of Kansas.

179 Here follow:

The Original Petition for a Writ of Error.
The Original Assignments of Errors.
The order allowing the Writ of Error, and fixing the amoun of the Bond for appeal at Twenty Thousand Dollars.
The Original Writ of Error.
A copy of the Bond for appeal.
The Original Citation together with the acceptance and waiv of service thereof.

180 In the Supreme Court of the State of Texas.

No. 6173.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, and ROBERT B. FOSTER, Appellants.

vs.

THE STATE OF KANSAS, Appellee.

Petition for Writ of Error.

Now comes Alexander Howat, August Dorchy, Thomas Harv and Robert B. Foster, Appellants in cause No. 6173, and rep that on the 17th day of July, 1920, a final judgment was duly e tered by the Supreme Court of the State of Kansas, affirming t judgment and sentence entered by the District Court of Crawfo County, Kansas, in a contempt proceeding wherein the State Kansas upon the relation of W. L. Huggins, presiding judge of t Court of Industrial Relations, and the Court of Industrial Relatio were plaintiffs against Alexander Howat, August Dorchy, Thom Harvey and Robert B. Foster, defendants, which judgment a sentence was in favor of the plaintiffs and against the defendants.

That this action was brought against the defendants as being contempt of an order of the District Court of Crawford Coun Kansas, commanding said defendants that they be and appear bef the Court of Industrial Relations and there to testify in a certa matter wherein the Court of Industrial Relations was attempting exercise the powers assumed to be possessed by said court to regul and control hours, wages, living conditions and the right to str or to refrain from striking; the right to work or to quit working,

so far as these matters applied to men engaged in the mining
181 industry in and about Crawford County, in the State of Kansas.

The defendants herein are officials of the United Mine Workers of the World, an association commonly known as a labor union. These defendants declined to appear before the said Court of Industrial Relations, asserting their constitutional right to refrain from recognizing the court in any manner whatsoever. The defendants in their answer filed in this cause in the District Court of Crawford County averred that the proceeding was a violation of the constitutional rights of these defendants as guaranteed by both the State and the Federal Constitution, and averred that the act creating the Court of Industrial Relations and the proceedings being resorted to in this cause violated the constitutional right and privilege of free speech and personal liberty, as guaranteed in and by the 14th Amendment of the Constitution of the United States, as well as the 5th Amendment of the Constitution of the United States and also deprived these defendants of their liberty and property without due process of law and abridged their privileges and immunities as citizens of the United States.

And your petitioners aver that in their answer and defense made to the complaint of the appellants, they expressly charged that they had the constitutional right and privilege aforesaid, and that the action of the appellants was illegal and unlawful in that it compelled the defendants herein to appear and testify before a non-judicial and illegally constituted body.

182 Your petitioners further aver that the Court of Industrial Relations, acting under the supposed authority and power vested in it by the act creating the Court of Industrial Relations is an illegal and unlawful body for the reason that said act by its terms and provisions violates the provisions of the Constitution of the United States laws enacted in pursuance thereof, as well as the Constitution of the State of Kansas, and the statutes of said state.

Your petitioners further aver that in their answer and defense made to the complaint of the appellants, they expressly charged that the act creating the Court of Industrial Relations was in violation of the Constitution of the United States, and therefore unconstitutional and void for the reason that in the powers conferred upon said Court of Industrial Relations by the said legislative enactment, legislative, judicial and administrative functions are commingled and interwoven in a manner violative of the constitutional requirements, that the three great departments of government, namely, the Legislative, Executive and Judicial Departments, and the powers and duties of each be exercised independently.

Your petitioners further aver that the act creating the Court of Industrial Relations, known as Substitute for Senate Bill No. One, was and is unconstitutional and void for the reason that said legislative enactment violates Section 21 of Article 4 of the Constitution of the United States.

And your petitioners further aver that in their answer and defense made to the complaint of the appellants they expressly charged that

the Court of Industrial Relations Act violated Article One of the Amendments to the Constitution of the United States, known
183 as the First Amendment.

Your petitioners further aver that in said answer it was expressly charged that the act creating the Court of Industrial Relations violated Article Five of the Amendment of the Constitution known as the Fifth Amendment, as well as Section One of Article Thirteen of the Constitution of the United States, known as the Thirteenth Amendment. And in addition thereto violated Section One of Article Fifteen of the Amendments to the Constitution of the United States, known as the Fifteenth Amendment.

And your petitioners aver that in their answer and defense made to the complaint of the appellants they expressly charged that the District Court of the State of Kansas had no right or authority to compel the attendance of witnesses before the Court of Industrial Relations for the reason that the court of Industrial Relations was illegally constituted and therefore an unlawful and non-judicial body and consequently the action of the District Court was a mere usurpation of authorities in that it sought to compel the appearance of witnesses before a non-judicial body without right or authority of legislative enactment so to do.

And your petitioners further aver that in their answer and defense made to the complaint of the appellants they expressly denied that they were guilty of violating any valid or lawful order of the District Court of Crawford County, Kansas, or that said defendants or any of them conspired to violate any lawful order of said District Court or that any of them are guilty of holding in contempt any valid and lawful order of said District Court.

184 That at the trial of said cause your petitioners herein expressly made the above and foregoing claims of right and privileges guaranteed to them by the constitution of the United States and the Federal Statutes enacted in pursuance thereof.

That in said suit your petitioners claimed the right, privileges and immunities hereinabove set forth, that notwithstanding these facts the Supreme Court of the State of Kansas decided against the rights, privileges and immunities thus specifically set forth and claimed by the petitioners. And your petitioners show that the said judgment and decision and interpretation of the constitution of the United States and federal statutes enacted under the provisions of said constitution and the denial to them of their right of freedom of speech, personal liberty, and freedom of contract, as herein claimed was and is repugnant to, and contravenes with the Fourteenth Amendment to the constitution of the United States and the laws of the United States of America.

And your petitioners aver that in the aforesaid judgment and proceedings certain errors were committed to the prejudice of your petitioners, all of which will more fully appear from the assignment of error which is filed herein.

Wherefore, your petitioners pray that a writ of error from the Supreme Court of the United States may issue in this case to the Supreme Court of the State of Kansas for the correction of errors

complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated by the clerk of the Supreme Court of the State of Kansas may be sent to the Supreme Court of the United States, as provided by law.

Dated this 6 day of September, A. D., 1920.

REDMOND S. BRENNAN,
Attorney for Petitioners and Plaintiffs in Error.

185 [Endorsed:] No. 23013, Original. In the Supreme Court of the State of Kansas. Alex. Howat et al., appellants, vs. The State of Kansas, appellee. Petition for writ of error. Filed Sep. 9, 1920. D. A. Valentine, Clerk Supreme Court. Redmond S. Brennan, attorney for petitioners and plaintiffs in error.

186 In the Supreme Court of the State of Kansas.

No. 6173.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, and ROBERT B. FOSTER, Appellants,

vs.

THE STATE OF KANSAS, Appellee.

Assignment of Error.

Now come Alexander Howat, August Dorchy, Thomas Harvey and Robert B. Foster, petitioners and plaintiffs in error, by Redmond S. Brennan and —— ——, their attorneys, and in connection with their petition for writ of error show that in the record and proceedings and in the rendering of the judgment and decision of the Supreme Court of the State of Kansas in the above entitled cause manifest error has intervened to the prejudice of these petitioners and plaintiffs in error in this, to-wit:

I.

That the Supreme Court of the State of Kansas erred in affirming the decree of the District Court of Crawford County, Kansas, and directing that the decree and sentence of said District Court be carried into force and effect because said decision of the Supreme Court of the State of Kansas, as aforesaid, deprives the respondents of
187 their rights of personal liberty and freedom of contract, as guaranteed by the Fourteenth Amendment to the Constitution of the United States in that by said decisions of the Honorable Supreme Court of the State of Kansas, it was held that numerous invalid sections of said Industrial Court Act did not destroy or render invalid the whole act, which decision is in conflict with previous decisions of the State of Kansas and the Federal courts of the United States. Therefore the Supreme Court erred in holding

that the decision of the District Court of the State of Kansas did not violate the Fourteenth Amendment of the Constitution of the United States or the laws of the United States.

II.

The Supreme Court of the State of Kansas in its decision in the above entitled cause erred in holding that the violation of said Industrial Court act of the Constitution of the United States and the Federal statutes did not invalidate the whole of said law and erred by such decision and refusal to pass upon the validity or invalidity of the whole act.

III.

The decision of the Supreme Court of the State of Kansas, is erroneous in that said decision is in conflict with and violates the provisions of the act of Congress of October 15th, 1914, 38 U. S. Statutes 738 (The Clayton Act) which act makes peaceful picketing lawful. Whereas, by the aforesaid decision of the Supreme Court of the State of Kansas, the provisions of the Industrial Court act denying the right to peaceful picket, is upheld.

IV.

The decision of the Supreme Court of the State of Kansas in the aforesaid cause is erroneous for the reason that the power
188 vested in the Industrial Court by the said Industrial court act is an encroachment upon the power vested in the United States Government to regulate and control the production and distribution of food and fuel under the Lever Act, is by said decision upheld and maintained.

V.

The decision of the Supreme Court of the State of Kansas is erroneous in that said decision is at variance with the decisions of the highest courts of the states, and the federal appellate courts as to the right of the legislature to interfere with personal liberty, regulation of wages and freedom of contract, under their constitutions and the constitutions of the United States, which questions are of such general importance throughout the land as to merit review and determination by the Supreme Court of the United States.

VI.

The decision of the Supreme Court of the State of Kansas is erroneous for the reason that it violates Section One of Article 13 of the Amendment to the Constitution of the United States, known as the 13th Amendment.

VII.

The decision of the Supreme Court of the State of Kansas is erroneous for the reason that said decision is in conflict with and violates Section One of Article 15 of the Amendments to the Constitution of the United States, known as the 15th Amendment, and thereby violates the rights guaranteed to these defendants by said Constitutional provisions.

VIII.

The decision of the Supreme Court of the State of Kansas is erroneous in that it decides that the commingling of the legislative, executive and judicial powers of government in one body, does not thereby render the act creating said body unlawful, illegal and unconstitutional, which decision is grossly prejudicial to the rights of these defendants, which rights are guaranteed under the constitution of the United States and the form of government established thereby.

IX.

The decision of the Supreme Court of the State of Kansas is erroneous and an encroachment on the constitutional rights of these petitioners because such decision upholds an order of a court of the State of Kansas commanding these petitioners to appear before a quasi-official body and to then and there answer certain questions then to be propounded. Such order was a violation of the rights of Freedom of Speech of these petitioners. The Supreme Court of the State of Kansas, when it declined to pass upon the validity of the Act creating the Court of Industrial Relations when said act was challenged by these petitioners, abandoned the right of Freedom of Speech as guaranteed by the Constitution of the United States.

X.

The Supreme Court of the State of Kansas erred in deciding that the constitutional rights of these petitioners under the Constitution of the United States were not brought into question in the instant case.

XI.

The Court erred in deciding that the Legislature of the State of Kansas was empowered to fix prices, wages, votes, etc. and to erect and appoint a commission to fix such prices, wages, votes, etc. without limitation as to maximum or minimum, to aid continuety of production because the doctrine thus announced is in violation of the guaranties of the Constitution of the United States as being an unlawful restriction on liberty of contract.

Wherefore, by reason whereof these petitioners and plaintiffs in error pray that a writ of error be allowed so that the judgment, decision and decree of the Supreme Court of the State of Kansas may be revised, and the errors, if any, contained in the decree and mandate of said Supreme Court may be corrected, and that said Supreme Court of the State of Kansas be ordered to enter a decree, reversing the decree, judgment and decision of the District Court of Crawford County, Kansas, in said cause.

Dated this 9 day of September, 1920.

REDMOND S. BRENNAN.

191 [Endorsed:] No. 6173, Original. In the Supreme Court of the State of Kansas. Alexander Howat et al., appellants, vs. The State of Kansas, appellee. Assignment of Error. Filed Sep. 9, 1920. D. A. Valentine, Clerk Supreme Court. Redmond S. Brennan, attorney for petitioners and plaintiffs in error.

192 In the Supreme Court of Kansas, —— Term, 1920.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, and ROBERT B. FOSTER, Plaintiffs in Error,

vs.

THE STATE OF KANSAS, Defendant in Error.

Order Allowing Writ of Error.

On the reading of the Petition of Alexander Howat, August Dorchy, Thomas Harvey and Robert B. Foster, plaintiffs in error, for a writ of error, and assignments of error, and upon due consideration of the record of said cause:

It is ordered that a writ of error be allowed from the Supreme Court of the United States as prayed for in said petition and that said writ of error and citation thereon be issued, served and returned to the Supreme Court of the United States in accordance with law upon condition that the said petitioners and plaintiffs in error, Alexander Howat, August Dorchy, Thomas Harvey and Robert B. Foster, give security in the sum of Twenty Thousand Dollars; that said plaintiffs in error shall prosecute said writ of error to effect and if said plaintiffs in error fail to make their said plea good, shall answer to the defendants in error for all costs and damages that may be adjudged or decreed on account of said writ of error.

And the said plaintiffs in error now presenting a bond in the sum of Twenty Thousand Dollars with the United States Fidelity and Deposit Company of Maryland, as surety, it is ordered that the same be and is hereby duly approved.

In witness whereof I have hereunto set my hand this 9th day of September, 1920.

W. A. JOHNSTON,
Chief Justice of the Supreme Court of the State of Kansas.

[Endorsed:] No. 6173, Original. In the Supreme Court of the State of Kansas. Alex. Howat et al., plaintiffs in error, vs. The State of Kansas, defendant in error. Order allowing writ of error. Filed Sep. 9, 1920. D. A. Valentine, Clerk Supreme Court.

UNITED STATES OF AMERICA:

The President of the United States of America to the Honorable Justices of the Supreme Court of the State of Kansas, Greetings:

Because in the record and proceedings as also in the rendition of the judgment of the plea which is in said Supreme Court of the State of Kansas before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in said suit between Alexander Howat, August Dorchy, Thomas Harvey and Robert B. Foster, appellants vs. the State of Kansas, appellee wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and a decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty or statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said constitution, treaty, statute or commission; a manifest error hath happened to the great damage of the said Alexander Howat, August Dorchy, Thomas Harvey and Robert B. Foster, appellants, as by said complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, do send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this Writ so that you may have the same in said Supreme Court in Washington, within 30 days from the time hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Edward D. White, Chief Justice of the Supreme Court of the United States, the 9th day of September, in the year of our Lord, One Thousand Nine Hundred and Twenty.

[Seal of the District Court U. S., District of Kansas.]

H. CAMPBELL,
Clerk United States District Court, District of Kansas.

W. A. JOHNSTON,
Chief Justice of the Supreme Court of the State of Kansas.

196 [Endorsed:] No. 23013, Original. State of Kansas ex rel. Richard J. Hopkins, att'y gen., appellee, v. Alexander Howatt et al., appellees. United States of America. The President of the United States of America to the honorable justices of the Supreme Court of the State of Kansas, Greetings. Writ of Error. Filed Sep. 18, 1920. D. A. Valentine, Clerk Supreme Court.

197 In the Supreme Court of the State of Kansas.

Case No. 23013.

THE STATE OF KANSAS, Plaintiff,

vs.

ALEXANDER HOWAT, Defendant.

Stay Bond.

Know all men by these presents:

That the undersigned, Alexander Howat, defendant herein, a resident of Crawford County, Kansas, and the United States Fidelity and Guaranty Company hereby acknowledge themselves firmly bound and indebted to the State of Kansas in the penal sum of Five Thousand ($5,000.00) Dollars, for the payment of which we the undersigned bind ourselves, our heirs, executors and administrators.

The conditions of this undertaking and obligation are such that whereas the said defendant Alexander Howat has been convicted in the District Court of Crawford County, Kansas, for "Contempt of Court" and has been sentenced by said Court upon said conviction, and

Whereas, the said conviction has been affirmed by the Supreme Court of the State of Kansas, the said defendant Alexander Howat desires to appeal from the decision rendered against him, the said —— —— in the said cause, to the Supreme Court of the United States.

Now, therefore, if the said defendant Alexander Howat shall well and truly appeal said case and diligently according to Law prosecute said appeal to a final termination in the Supreme Court of the United

States and abide the decision and judgment of the said Supreme Court of the United States, then and in that event this bond shall be null and void; otherwise, to remain in full force and effect.

Witness our hands this 11th day of September, 1920.

[SEAL.] ALEXANDER HOWAT,
Principal.
THE UNITED STATES FIDELITY & GUARANTY CO.,
By F. C. WERNER,
Attorney-in-fact,
Surety.

The above bond approved by me this 28th day of September, 1920.
W. A. JOHNSTON,
Chief Justice.

198 [Endorsed:] No. 23013. The State of Kansas, pl'tf, vs. Alexander Howat, def't. Stay Bond. Filed Sep. 13, 1920. D. A. Valentine, Clerk Supreme Court.

199 In the Supreme Court of the State of Kansas.

Case No. 23013.

THE STATE OF KANSAS, Plaintiff,

vs.

AUGUST DORCHY, Defendant.

Stay Bond.

Know all men by these presents:

That the undersigned, August Dorchy defendant herein, a resident of Crawford County, Kansas, and the United States Fidelity and Guaranty Company hereby acknowledge themselves firmly bound and indebted to the State of Kansas in the penal sum of Five Thousand ($5,000.00) Dollars, for the payment of which we the undersigned bind ourselves, our heirs, executors and administrators.

The conditions of this undertaking and obligation are such that whereas the said defendant August Dorchy has been convicted in the District Court of Crawford County, Kansas, for "Contempt of Court" and has been sentenced by said Court upon said conviction, and

Whereas, the said conviction has been affirmed by the Supreme Court of the State of Kansas, the said defendant, August Dorchy, desires to appeal from the decision rendered against him, the said —— ——, in the said cause, to the Supreme Court of the United States.

Now, therefore, if the said defendant August Dorchy shall well and truly appeal said case and diligently according to Law prosecute

said appeal to a final termination in the Supreme Court of the Unite States and abide the decision and judgment of the said Supreme Cou of the United States, then and in that event this bond shall be nul and void; otherwise, to remain in full force and effect.

Witness our hands this 11th day of September, 1920.

AUGUST DORCHY,
Principal.

[SEAL.]

THE UNITED STATES FIDELITY & GUARANTY CO.,
By F. C. WERNER,
Attorney-in-fact,
Surety.

The above bond approved by me this 28th day of September, 192

W. A. JOHNSTON,
Chief Justice.

200 [Endorsed:] No. 23013. The State of Kansas, pltf., v August Dorchy, deft. Stay Bond. Filed September 13. A. Valentine, clerk Supreme Court.

201 In the Supreme Court of the State of Kansas.

Case No. 23013.

THE STATE OF KANSAS, Plaintiff,

vs.

THOMAS HARVEY, Defendant.

Stay Bond.

Know all men by these presents:

That the undersigned, Thomas Harvey defendant herein, a r dent of Crawford County, Kansas, and the United States Fide and Guaranty Company hereby acknowledge themselves firm bound and indebted to the State of Kansas in the penal sum of F Thousand ($5,000.00) Dollars, for the payment of which we undersigned bind ourselves, our heirs, executors and administrato

The conditions of this undertaking and obligation are such whereas the said defendant Thomas Harvey has been convicte the District Court of Crawford County, Kansas, for "Contemp Court" and has been sentenced by said Court upon said convict and

Whereas, the said conviction has been affirmed by the Supr Court of the State of Kansas, the said defendant, Thomas Har desires to appeal from the decision rendered against him, the —— ——, in the said cause, to the Supreme Court of the U States.

Now, therefore, if the said defendant Thomas Harvey shall and truly appeal said case and diligently according to Law pros

said appeal to a final termination in the Supreme Court of the United States and abide the decision and judgment of the said Supreme Court of the United States, then and in that event this bond shall be null and void; otherwise, to remain in full force and effect.

Witness our hands this 11th day of September, 1920.

THOMAS HARVEY,
[SEAL.] *Principal.*
THE UNITED STATES FIDELITY & GUARANTY CO.,
By F. C. WERNER,
Attorney-in-fact,
Surety.

The above bond approved by me this 28th day of September, 1920.

W. A. JOHNSTON,
Chief Justice.

202 [Endorsed:] No. 23013. The State of Kansas, pltf., vs. Thomas Harvey, deft. Stay Bond. Filed Sep. 13, 1920. D. A. Valentine, clerk Supreme Court.

203 In the Supreme Court of the State of Kansas.

Case No. 23013.

THE STATE OF KANSAS, Plaintiff,

vs.

ROBERT B. FOSTER, Defendant.

Stay Bond.

Know all men by these presents:

That the undersigned, Robert B. Foster defendant herein, a resident of Crawford County, Kansas, and the United States Fidelity and Guaranty Company hereby acknowledge themselves firmly bound and indebted to the State of Kansas in the penal sum of Five Thousand ($5,000.00) Dollars, for the payment of which we the undersigned bind ourselves, our heirs, executors and administrators.

The conditions of this undertaking and obligation are such that whereas the said defendant Robert B. Foster has been convicted in the District Court of Crawford County, Kansas, for "Contempt of Court" and has been sentenced by said Court upon said conviction, and

Whereas, the said conviction has been affirmed by the Supreme Court of the State of Kansas, the said defendant desires to appeal from the decision rendered against him, the said Robert B. Foster in the said cause, to the Supreme Court of the United States.

Now, therefore, if the said defendant Robert B. Foster shall well and truly appeal said case and diligently according to Law prosecute said appeal to a final termination in the Supreme Court of the United

States and abide the decision and judgment of the said Supreme Court of the United States, then and in that event this bond shall be null and void; otherwise, to remain in full force and effect.

Witness our hands this 11th day of September, 1920.

[SEAL.] ROBERT B. FOSTER,
Principal.
THE UNITED STATES FIDELITY & GUARANTY CO.,
By F. C. WERNER,
Attorney-in-fact,
Surety.

The above bond approved by me this 28th day of September, 1920.
W. A. JOHNSTON,
Chief Justice.

204 [Endorsed:] No. 23013. The State of Kansas, plff., vs. Robert B. Foster, deft. Stay Bond. Filed Sep. 13, 1920. D. A. Valtentine, clerk Supreme Court.

205 (Stamp.)

Power of Attorney.

No. 26310.

Know all men by these presents:

That the United States Fidelity and Guaranty Company, a body corporate, duly incorporated under the laws of the State of Maryland, doth hereby constitute and appoint F. C. Werner of the City of Pittsburg, County of Crawford and State of Kansas to be its true and lawful attorney in and for the county of Crawford in the State of Kansas for the following purposes, to wit:

To sign its name as surety to, and to execute, acknowledge, justify upon and deliver any and all stipulations, bonds and undertakings given or required in any judicial action or proceeding brought or pending within the aforesaid county of the said State, or in any judicial action or proceeding over which a United States Court shall exercise jurisdiction.

It being the intention of this Power of Attorney to fully authorize and empower the said F. C. Werner to sign the name of said Company, and affix its corporate seal as surety to any or all of said stipulations, bonds and undertakings, and thereby to lawfully bind it as fully and to all intents and purposes as if done by the duly authorized officers of said Company with the seal of the said Company thereto affixed, and the said Company hereby ratifies and confirms all and whatsoever the said F. C. Werner may lawfully do in the premises by virtue of these presents.

In witness whereof, the said United States Fidelity and Guaranty Company, pursuant to a resolution of its Board of Directors, duly passed on the 11th day of January, A. D. 1904 (a certified copy of

hich is hereto annexed), has caused these presents to be sealed with
s common and corporate seal, duly attested by its Vice-President and
r its Assistant Secretary, this 15th day of July A. D. 1920.

[SEAL.] UNITED STATES FIDELITY AND GUARANTY COMPANY,
By JOSEPH R. WILSON,
Vice-President.
WM. M. PEGRAM,
Assistant Secretary.

06 STATE OF MARYLAND,
City of Baltimore, ss:

On this 15th day of July, A. D. 1920, before me appears Joseph
. Wilson, Vice-President of the United States Fidelity and Guaranty
ompany, of Baltimore City, Maryland, with whom I am personally
equainted, who being by me duly sworn, says that he is the Vice-
resident of the United States Fidelity and Guaranty Company; that
e knows the corporate seal of said corporation; that the seal affixed
o the annexed instrument is such corporate seal; that it was affixed
y order of the Board of Directors of said Company; that he signed
aid instrument as Vice President of said Company by like authority.
The said Joseph R. Wilson further says that he is acquainted with
Wm. M. Pegram and knows him to be the Assistant Secretary of the
nited States Fidelity and Guaranty Company; that the signature
f the said Wm. M. Pegram subscribed to said instrument, is the
enuine handwriting of said Wm. M. Pegram, and was thereto sub-
ribed by like order of the Board of Directors.

My commission expires the first Monday in May, A. D. 1922.

A. D. PATRICK,
Notary Public.

Copy of Resolution.

That whereas, it is often necessary in order to facilitate the busi-
ss of the Company in States other than Maryland, and in the
erritories and in Provinces of the Dominion of Canada and in the
olony of Newfoundland to have stipulations, bonds and under-
kings given or required in judicial actions or proceedings, executed
ith the least delay and with promptness.

Now, therefore be it resolved, that the President or one of the
ice-Presidents and the Secretary or one of the Assistant Secretaries
. and they are hereby authorized to appoint one or more persons
siding in the States other than Maryland and in the Territories
f the United States and in the Provinces of the Dominion of Canada
nd in the Colony of Newfoundland, to sign the name of the Com-
pany as surety to and to execute acknowledge, justify upon
07 and deliver any and all stipulations, bonds and undertakings
given or required in any judicial action or proceeding within
ny one of the said States or Territories, or Provinces of Canada,
Colony of Newfoundland, and that the said person or persons so

appointed are hereby authorized and empowered to sign the na
of the Company and to affix its corporate seal as surety to said sti
lations, bonds and undertakings, and to sign their names thereto
attestation of same, and thereby to lawfully bind the Company to
intents and purposes, as if done by its duly authorized officers, a
the Company through us its Board of Directors, hereby ratifies a
confirms all and whatsoever the said person or persons may lawfu
do by virtue of the authority hereby vested in them.

I, Wm. M. Pegram, Assistant Secretary of the United States Fi
ity and Guaranty Company, do hereby certify that the above a
foregoing is a full and correct copy of a resolution passed by
Board of Directors of the said Company at a regular meeting ther
duly called and held on the 11th day of January, A. D. 190
quorum being present, as the same appears on the records of
Company now in my possession and custody as Assistant Secretary

In witness whereof, I have hereunto set my hand and affixed
seal of the said Company, at the City of Baltimore, Maryland,
15th day of July, A. D. 1920.

WM. M. PEGRAM,
Assistant Secretary

(Endorsed) 26310. Judicial power of attorney from Un
States Fidelity and Guaranty Company to F. C. Werner, Pittsb
Kansas. 7-15-20. Filed September 13, 1920. D. A. Valent
clerk Supreme Court.

208 United States of America to Richard J. Hopkins, Atto
General of the State of Kansas, Greeting:

You are hereby cited and admonished to be and appear at
Supreme Court of the United States at Washington within th
(30) days from the date hereof, pursuant to a writ of error file
the clerk's office of the Supreme Court of the State of Kansas wh
Alexander Howat, August Dorchy, Thomas Harvey and Robe
Foster, appellants, are plaintiffs in error, and the State of Ka
appellee, is defendant in error, to show cause, if any there be,
the judgment rendered against the said plaintiffs in error, as in
said writ of error mentioned, should not be corrected, and
speedy justice should not be done to the parties in that behalf.

Witness the Honorable William A. Johnson, Chief Justice o
Supreme Court of the State of Kansas, this ninth day of Septe
in the Year of our Lord, One Thousand Nine Hundred and Tw

W. A. JOHNSTON,
Chief Justice of the Supreme Court of the State of Kan

Received copy of above citation this 18th day of September,
and service thereof is hereby waived.

RICHARD J. HOPKINS,
Attorney Gene

209 [Endorsed:] 23013. Original. State of Kansas ex rel., Richard J. Hopkins, atty. gen., appellee, v. Alexander Howat et al., appellants. United States of America to Richard J. Hopkins, Attorney General of the State of Kansas, Greetings. Filed Sep. 18, 1920. D. A. Valentine, clerk Supreme Court.

210 STATE OF KANSAS, *ss:*

Supreme Court.

I, D. A. Valentine, Clerk of the Supreme Court of the State of Kansas, do hereby certify that there was lodged with me as such Clerk, on September 13th, 1920, in the above entitled case—

1. The Original Bond for Appeal of which a copy is herein set forth, and

2. Two copies of the Writ of Error as herein set forth, one for the Appellee and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court of the State of Kansas, in the City of Topeka, this 29th day of September, A. D. 1920.

[Seal of Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk of the Supreme Court of the State of Kansas.

211 UNITED STATES OF AMERICA, *ss:*

Supreme Court of Kansas.

In obedience to the commands of this writ, I herewith transmit to the Supreme Court of the United States a duly certified Transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said Supreme Court of Kansas in the City of Topeka, this 29th day of September, A. D. 1920.

[Seal of Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk of the Supreme Court of the State of Kansas.

Endorsed on cover: File No. 27,944. Kansas Supreme Court. Term No. 587. Alexander Howat, August Dorchy, Thomas Harvey, and Robert B. Foster, plaintiffs in error, vs. The State of Kansas. Filed October 19th, 1920. File No. 27,944.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 491.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE OF KANSAS.

N ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

FILED AUGUST 24, 1921.

(28,446)

(28,446)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 491.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE OF KANSAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 28, 1921.

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1 In the Supreme Court of the State of Kansas.

No. 23505.

THE STATE OF KANSAS on the Relation of RICHARD J. HOPKINS, Attorney General, and C. A. Burnett, County Attorney in and for Crawford County, Appellee,

vs.

ALEXANDER HOWATT, AUGUST CORCHY, THOMAS HARVEY, ROBERT B. Foster, James McIlwrath, John Fleming, Willard Titus, Thomas Cunningham, the United Mine Workers of America, a Voluntary Association of Labor Unions; also Officers of Local Unions of said United Mine Workers of America of District No. 14 et al., Appellants.

Be it remembered, that on the 19th day of March, 1921, there was filed in the office of the Clerk of the Supreme Court of the State of Kansas, a Notice of Appeal and Transcript of Journal Entry of Judgment, which are in the words and figures as follows, to-wit:

2 STATE OF KANSAS on the Relation of RICHARD J. HOPKINS, Attorney General, and C. A. Burnett, County Attorney in and for Crawford County, Kansas, Plaintiff,

vs.

ALEXANDER HOWAT et al., Defendants.

Notice of Appeal.

To the above-named complainant, the State of Kansas, and Richard J. Hopkins, Attorney General of the State of Kansas, and C. A. Burnett, County Attorney of Crawford County, Kansas, attorneys of record for complainant above named:

The above named complainant, the State of Kansas, and its attorneys of record, Richard J. Hopkins, Attorney General, and C. A. Burnett, County Attorney of Crawford County, Kansas, are hereby notified that the above named defendants, and each of them, appeals from the court's findings of fact and conclusions of law and from the judgment and orders of the above entitled court hereinbefore made and entered in the above entitled case on the 16th day of February, 1921, in which judgment was rendered by said court in favor of said complainant and against said defendants, and each of them, and sentence passed by the said court upon said defendants, and each of said defendants, upon the said date, and the defendants, and each of *said defendants, upon the said date, and the defendants, and each of* them, appeals from said judgment and sentence.

First. From the order and judgment of the court overruling each of defendant's motion to quash the ac tion filed herein

Second. From the order and judgment of the court in overru each of defendant's objection to the introduction of any testim in the case

Third. From the order and judgment of the court in overru each of defendant's demurrer to the State's evidence and motion the discharge of the said defendants

Fourth. From the order and judgment of the court in overru each of defendant's motion for a new trial

Fifth. From the order and judgment of the court in overru defendant's motion in arrest of judgment

and appeals from the judgment and all orders and rulings o court generally and from all of the final orders, findings and ru made and entered by said court in the above entitled cause ad to the defendants, and each of them, and in favor of the comp ant, and of all of the above and foregoing you are hereby no and you will duly take notice of the same.

FITE, GALLERY,
EDMOND S. BRENNEN,
Attorneys for Defendants

We, the undersigned attorneys of record for the complai above named, acknowledge service of a copy of the above and going notice of appeal on us this 16th day of February, 1921

FRED S. JACKSON
C. A. BURNETT,
RICHARD J. HOPKINS,
Attorneys for Complainant

Endorsements: Clerk's Notice of Appeal Filed Feb. 16, Edna M. Burns District Clerk

4 *Certificate.*

I, Edna M. Burns, Clerk of the District Court of Crawford C Kansas, hereby certify the above and foregoing to be a full, tr complete copy of the affidavit, information, order for attachment of attachment, answer, counter-affidavit, motion for a new trial, of appeal as the same now appears of record and on file in m in the above entitled case in said District Court of Crawford C Kansas, sitting at Pittsburg, on a hearing held February 15 Being suit numbered 6196, wherein the State of Kansas i plaintiff and Alexander Howat et al. are defendants; said

Affidavit	Filed Feb. 7, 1921
Accusation	Filed Feb. 7, 1921
Order for attachment	Filed Feb. 7, 1921
Writ of attachment	Filed Feb. 7, 1921
Answer	Filed Feb. 10, 1921
Special questions	Filed Feb. 16, 1921
Journal entry	Filed March 16, 1921
Motion for new trial	Filed Feb. 16, 1921
Notice of appeal	Filed Feb. 16, 1921

This being a certified copy of the entire record of the above named papers in the above named hearing in the within entitled case.

In Witness Whereof, I have hereunto set my hand and seal of this office this 28th day of April, 1921.

[SEAL.]

EDNA M. BURNS,
Clerk of the District Court of
Crawford County, Kansas.

5 THE STATE OF KANSAS on the Relation of RICHARD J. HOPKINS, Attorney General, and C. A. BURNETT, County Attorney in and for Crawford County, Kansas, Plaintiff.

v.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, ROBERT B. FOSTER, JAMES McILWRATH, JOHN FLEMING, WILLARD TITUS, THOMAS CUNNINGHAM et al., Defendants.

Journal Entry.

Present: A. J. Curran, Judge Div. No. 1; Edna M. Burns, Clerk; Milt Gould, Sheriff; John Halliday, Court Bailiff; L. H. Winters, Court Reporter; C. A. Burnett, County Attorney.

Now, on this 7th day of February, A. D. 1921, the same being one of the regular judicial days of the November, 1920, term of the above entitled court, this cause came on for hearing upon an affidavit filed herein by Richard J. Hopkins, Attorney General of Kansas, and C. A. Burnett, County Attorney of Crawford County, Kansas, charging contempt of court wherein the defendants, Alexander Howat, August Dorchey, Thomas Harvey, James McIlwrath, John Fleming, Thomas Cunningham, Amos Standering, Willard Titus, and Hearl Maxwell had violated the permanent injunction heretofore issued by the above entitled court on the 11th day of September, 1920.

The plaintiff appeared by Richard J. Hopkins, Attorney General; F. S. Jackson, Attorney for the Court of Industrial Relations of the State of Kansas, and C. A. Burnett, County Attorney of Crawford County, Kansas. Thereupon the plaintiff introduced oral testimony in support of its affidavit and application for an order of attachment. The witnesses were examined on the part of the State by F. S. Jackson, attorney for the plaintiff, and said witnesses were cross examined on the part of the defendant by James H. Callery. And, thereupon,

it appearing upon the evidence submitted by the plaintiff, and said affidavit, that there is reasonable grounds for believing that the defendants, members of the District Executive Board of District No. 14 of the United Mine Workers of America, have violated the orders, commands and requirements of said judgment of the injunction.

It is, therefore, ordered that attachment be issued for the arrest of said defendants requiring that they be brought into court to make answer of the charges made against them by said affidavit.

And, thereafter, said defendants having been arrested and brought into court *and* there appeared each in his own proper person the defendants, Alexander Howat, August Dorchey, Willard Titus, Thomas Cunningham, and Thomas Harvey, and the defendants, James McIlwrath, Hearl Maxwell, John Fleming, John Billings, and Amos Standering appeared by their attorney, James H. Callery, who announced in open court that he appeared for each and all of the defendants charged herein.

Thereupon, Richard J. Hopkins, Attorney General, and C. A. Burnett, County Attorney, asked and obtained permission of the court to dismiss said charges as to defendants, Thomas Harvey, Thomas Cunningham, John Billings and Amos Standering.

The verbal answers of the defendants to said charges, and the testimony at said time having shown that the defendants, Thomas Harvey, Thomas Cunningham, John Billings and Amos Standering, were not guilty of any of the said charges and that they had not in any way violated the orders and commands of said injunction, it is ordered that said proceedings in contempt be dismissed as against them.

It is further ordered that the plaintiff file forthwith formal written accusation against the defendants, Alexander Howat, August Dorchey, James McIlwrath, John Fleming, Willard Titus and Hearl Maxwell, and that said defendants file their answer to said accusation in writing, on or before February 8, 1921, at 1:30 p. m., at which time said cause be heard on the issues joined by said accusation and the answers thereto on the 8th day of February, 1921, at 1:30 p. m., and that each of said defendants be released on their own recognizance in the amount of five hundred ($500.00) dollars each for their appearance at the time of said trial.

Thereafter, at 1:30 p. m. on the 8th day of February, 1921, said cause came on for trial. The defendants, Alexander Howat, August Dorchey, James McIlwrath, John Fleming, Willard Titus and Hearl Maxwell, appeared in their own person, and by their attorney, James H. Callery, and the plaintiff *appearing* by Richard J. Hopkins, Attorney General, C. A. Burnett, County Attorney, and E. S. Jackson. The defendants asked and were granted a continuance of said trial until 2:30 p. m., and that said time having arrived the plaintiff *appearing* as before, and the defendants *appearing* as before and by their attorneys, Phil Callery and R. S. Brennan. And, thereupon the defendants, upon application, were given an extension of time in which to file their answers to the accusation filed against them herein until February 14, 1921, at 10:00 a. m., and the cause set for hearing

on the 15th day of February, 1921, at 9 o'clock a. m. on said day, and the defendants were ordered to enter into bonds in the amount of five hundred ($500.00) dollars, each, for their appearance at the time of said trial and to abide the judgment of the court.

And, it was further ordered that the personal recognizance of each of said defendants be accepted on said bonds, and thereafter on the 15th day of February, 1921, said cause accordingly came on for hearing. All of the parties *appearing* as before and announced themselves as ready for trial.

Thereupon, the said plaintiff introduced its evidence and rested. And thereupon the defendants offered a demurrer to said evidence, and the court, after argument thereon, and being fully advised in the premises, overruled said demurrer, the defendants duly excepting to said ruling. Thereupon said defendants introduced their evidence and rested. Thereupon all parties to said cause rested their case. Further proceedings herein were continued until February 16, 1921, on the court's own motion, until 9 o'clock a. m. of said day.

Thereupon said time having arrived, the parties appearing as before, and the case having been duly argued, and the court being fully advised in the premises doth find that the said defendants, Alexander Howat, August Dorchey, James McIlwrath, John Fleming, Willard Titus and Hoard Maxwell, on February 3, 1921, and for sometime prior thereto, were and now are, members of the District Board of District No. 14 of the United Mine Workers of America; and the said named defendants constituted a majority of said District Board of said District No. 14 of the United Mine Workers of America.

And the court further finds that the said named defendants, on or about February 3, 1921, as members of said District Board, voted that the miners and mine workers cease work at the George K. Mackie Fuel Company, Mines Number "H" and "J," said cessation of work at said mines to begin on Friday, February 4, 1921.

And the court further finds that the Local Unions of the United Mine Workers of America, to which the workers employed at said mines "H" and "J" of the George K. Mackie Fuel Company belonged, were notified by said District Board of District No. 14, of the United Mine Workers of America, of the said order that had been adopted by said District Board, ordering and directing that the workers employed at said mines "H" and "J" cease work beginning February 4, 1921.

And the court further finds that upon the receipt of said order of the said District Board to cease work at said mines "H" and "J," all the mine workers employed at said mines ceased work in compliance with, and in obedience to the said order of the said District Board.

And the court further finds that the said members of the said District Board, wilfully caused the suspension of the operation of said coal mines "H" and "J," and the production of coal at said mines, for the purpose and intent of evading provisions of Chapter 29, Laws of Kansas, Special Session of 1920, being the act creating and establishing the Court of Industrial Relations of the State of Kansas.

And the court further finds that the allegations and averments of the accusation filed herein are true as to each of said named defendants.

And the court further finds that said defendants, and each of them, are guilty of the violation and disobedience of the terms and provisions of the judgment of injunction rendered herein on September 14, 1920, committed in the manner and form, time and place, as charged in the accusation filed herein.

And the court further finds that said defendants, and each of them, are guilty of contempt of the said injunction of the above entitled court, committed in the manner and form, time and place as charged in the accusation filed herein.

Said defendants, and each of them, object and except to each and all of the above findings.

Now, therefore, in view of the premises aforesaid, the defendants Alexander Howat, August Dorchey, James McIlwrath, John Fleming, William I Titus and Heard Maxwell, and each of them,
10 were caused to stand before the court, and were by the court informed of the findings and judgment of the said court that said defendants, and each of them, are guilty of contempt of court and of the violation and disobedience of the terms and provisions of the permanent injunction heretofore rendered by the court on September 14, 1920, and the defendants, and each of them, were caused to stand before the court for judgment and sentence, and were inquired of by the court if there was any legal cause or reason to show why judgment and sentence should not be pronounced upon each of said defendants according to law, and no legal cause or reason being shown or appearing to the court, it is by the court considered, ordered, adjudged and decreed that the said defendant Alexander Howat, be confined in the jail of Crawford County, Kansas, for a period of one year and pay the costs of this prosecution, and be confined in said jail of Crawford County, Kansas, until said costs are paid. Said defendant objects and excepts.

It is further by the court considered, ordered, adjudged and decreed that the said defendant, August Dorchey, be confined in the jail of Crawford County, Kansas, for a period of one year and pay the costs of this prosecution, and be confined in said jail of Crawford County, Kansas, until said costs are paid. Said defendant objects and excepts.

It is further by the court considered, ordered, adjudged and decreed that the said defendant, James McIlwrath, be confined in the jail of Crawford County, Kansas, for a period of one year and pay the costs of this prosecution, and be confined in said jail of Crawford County, Kansas, until said costs are paid. Said defendant objects and excepts.

11 It is further by the court considered, ordered, adjudged and decreed that the said defendant, John Fleming, be confined in the jail of Crawford County, Kansas, for a period of one year and pay the costs of this prosecution, and be confined in said jail of Crawford County, Kansas, until said costs are paid. Said defendant objects and excepts.

It is further by the court considered, ordered, adjudged and decreed that the said defendant, Willard Titus, be confined in the jail of Crawford County, Kansas, for a period of one year and pay the costs of this prosecution and be confined in said jail of Crawford County, Kansas, until said costs are paid. Said defendant objects and excepts.

It is further by the court considered, ordered, adjudged and decreed that the said defendant, Hearl Maxwell, be confined in the jail of Crawford County, Kansas, for a period of one year and pay the costs of this prosecution, and be confined in said jail of Crawford County, Kansas, until said costs are paid. Said defendant objects and excepts.

Thereupon, the defendants, and each of them, filed their motion herein for a new trial, which motion was by the court overruled. Said defendants, and each of them, object and except.

Thereupon, said defendants, and each of them, in open court, gave notice of appeal to the Supreme Court of Kansas, from each of said judgments and sentences, and made application for a stay of execution of said judgments and sentences pending the hearing of said appeal. It was thereupon ordered by the court that execution of said judgments and sentences herein be stayed, pending the decision of the Supreme Court upon said appeal upon said defendants,
12 and each of them, giving a good and sufficient bond in the sum of Two Thousand ($2,000.00) Dollars, conditioned as required by law.

Thereupon, on the 17th day of February, 1921, the defendants, Alexander Howat, August Borchev, James Mellwrath, John Fleming, Willard Titus and Hearl Maxwell, and each of them, filed herein his separate bond in the sum of Two Thousand ($2,000.00) Dollars, as heretofore ordered and directed by the court, and said court does hereby approve each of said bonds filed herein by each of said defendants and the execution of the judgments and sentences heretofore imposed by the court upon said defendants, and each of them, are hereby stayed, pending the final determination and hearing of the appeal of said defendants, and each of them, to the Supreme Court of Kansas.

A. J. CURRAN,
Judge Division No. 1.

Indorsements: Case No. 6166. 15-21. Journal S. Page 254-255. In the District Court of Crawford County, Kansas, Sitting at Pittsburg. The State of Kansas, ex rel. Plaintiff v. Alexander Howat, et al., Defendants. Journal Entry. Filed March 16, 1921. Edna M. Burns, District Clerk. Ex. "B."

Motion for New Trial.

Comes now the defendants above named by their attorneys of record, Phil H. Callery and Redmond S. Brennen, and move the court for an order vacating and setting aside the judgment of said court heretofore and on the fifteenth day of February, 1921, rendered in the above entitled action, and grant to them and each of
13 them a new trial or hearing of said cause for the reasons and upon the following grounds, to-wit:

First. Because of the abuse of the discretion of the court during the trial of the case.

Second. Because of the erroneous rulings of the court during the trial of the case.

Third. Because the judgment rendered by the court is, both in part, and wholly, contrary to the evidence adduced at the trial.

Fourth. Because the judgment of the court is contrary to the law governing in the case.

Fifth. Because the court erred in overruling defendants' objection to the introduction of any testimony on the part of the State in the said cause.

Sixth. Because the court admitted illegal testimony on the part of the State over the objection of the defendants in the trial of the said cause.

Seventh. Because of accident and surprise during the trial which ordinary prudence on the part of defendants could not have guarded against.

Eighth. Because the court erred in overruling defendants' demurrr to the plaintiff's evidence.

Ninth. Because the judgment of the court was given under the influence of passion and prejudice.

Tenth. Because the defendants and each of them, since the trial of the case, have discovered evidence material to the trial thereof, which said defendants, nor either of the said defendants, could not have, with reasonable diligence, discovered and produced at the trial.

PHIL CALLERY,
REDMOND S. BRENNEN,
Attorneys for Defendants.

14 February 16, 1921.

The above motion for a new trial submitted to court without argument and the court being sufficiently advised in the premises doth overrule the same. Said defendants, and each of them excepts.

A. J. CURRAN,
Judge of District Court, Div. No. 1.

Indorsements: No. 6166. Motion "D", page 354, 2-17-21. Motion for new trial. Filed February 16, 1921. Edna M. Burns, District Clerk.

15 Be it further remembered, That on the 11th day of May, 1921, there was filed in the office of the Clerk of the Supreme Court of the State of Kansas, an Abstract of the Record, prepared by the appellants, which Abstract of the Record is in the words and figures as follows, to wit:

16 Filed May 4, 1921. D. A. Valentine, Clerk Supreme Court.

In the Supreme Court of the State of Kansas.

No. 23505.

THE STATE OF KANSAS on the Relation of RICHARD J. HOPKINS, Attorney General, and C. A. Burnett, County Attorney, in and for Crawford County, Kansas, Appellee,

vs.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, ROBERT B. Foster, James McIlwrath, John Fleming, Willard Titus, Thomas Cunningham, The United Mine Workers of America, a Voluntary Association of Labor Unions; Also Officers of Local Unions of said United Mine Workers of America of District No. 14, et al., Appellants.

ABSTRACT OF THE RECORD.

Redmond S. Brennan,
Kansas City, Mo.;
Phil A. Callery,
Pittsburg, Kansas,
Attorneys for Appellants.
Richard J. Hopkins,
Attorney General,
Topeka, Kansas;
F. S. Jackson,
Topeka, Kansas;
C. A. Burnett,
Pittsburg, Kansas,
Attorneys for Appellee.

1 In the Supreme Court of the State of Kansas.

No. 23505.

THE STATE OF KANSAS on the Relation of RICHARD J. HOPKINS, Attorney General, and C. A. Burnett, County Attorney, in and for Crawford County, Kansas, Appellee,

vs.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, ROBERT B. Foster, James McIlwrath, John Fleming, Willard Titus, Thomas Cunningham, The United Mine Workers of America, a Voluntary Association of Labor Unions; Also Officers of Local Unions of said United Mine Workers of America of District No. 14, et al., Appellants.

Abstract of the Record.

The District Court of Crawford County, Kansas, on September 11, 1920, issued to the State of Kansas, on ex rel., of Richard Hopkins a permanent injunction, the journal entry of which is as follows:

Journal Entry.

Permanent Injunction.

Now on this 11th day of September, 1920, the same being one of the regular judicial days of the May, 1920, term of the District
2 Court of Crawford County, Kansas, sitting at Pittsburg, the case came on for hearing on the regular call of the docket. The plaintiff appeared by F. S. Jackson, attorney for the Court of Industrial Relations of the State of Kansas, and by A. B. Kelly, county attorney of Crawford County, Kansas. The said defendants appeared by their attorneys, Phil H. Callery and Byron H. Coon.

All parties announced ready for trial and thereupon the plaintiff introduced its evidence and rested its case. Thereupon the defendants, and each of them, demurred to the evidence of the said plaintiff, which demurrer was argued by counsel both for the plaintiff and for the said defendants, and the court being well and sufficiently advised in the premises overruled said demurrer, to which ruling the said defendants and each of them excepted. Thereupon the attorneys for said defendants and each of them announced that no testimony would be introduced on behalf of said defendants and said defendants and each of them rested. Thereupon arguments of counsel were heard.

Upon proof offered the court finds that all the averments, statements and allegations contained in plaintiff's amended and supplemental petition filed April 12, 1920, and in plaintiff's supplemental petition filed August 20, 1920, are true, and the court further finds the issues joined herein in favor of the said plaintiff and against the said defendants, and each of them, and the court further finds upon proof offered that the temporary injunction heretofore made and issued in this action on April 30, 1920, should be made permanent, to which findings the defendants excepted.

Therefore it is hereby ordered, adjudged and decreed that the temporary injunction heretofore made and issued by this court on the
3 30th day of April, 1920, be and the same is hereby made permanent, and it is hereby ordered, adjudged and decreed that each of said defendants in said entitled cause, and all other persons acting in conjunction with or under their orders and instructions and their agents, employees and representatives are hereby perpetually restrained and enjoined from directing, ordering or in any manner bringing about the hindering, delaying, interference with, suspension of the operation of any coal mines in the counties of Crawford, Cherokee or Osage in the state of Kansas, and of the mining of coal at any of said mines and from causing the mines

embers of said labor union to quit their work at said mines for
urpose or purposes of hindering, delaying, interfering with or
nding the operation of any coal mines in said counties, and
intimidating by threats, abuse or in any other manner any
n or persons with intent to induce such person or persons to quit
work at said mines, or for the purpose of inducing, deterring,
nting, impelling or intimidating any other person or persons
accepting employment or remaining in employment at said
s, and from in any way whatsoever carrying out any conspiracy
e execution of any of said purposes.

d the said defendants and persons are further perpetually en-
d and restrained from entering into, maintaining, or carrying
ny conspiracy between themselves or between themselves and
ther persons formed or entered into for the purpose of prevent-
he operation of said coal mines with reasonable continuity and
ency, and from, to any extent, wilfully hindering, delaying,
ing, or suspending the continuous and efficient operation of said
mines with the purpose or intent of evading the provisions of
the laws of the State of Kansas and particularly the act creat-
ing the Court of Industrial Relations of the State of Kansas
and defining its powers and duties, to-wit, Chapter 29 of the
of the special session of the Legislature of the State of Kansas of
, and from violating any of the provisions of said law;

d the said defendants and each of them are further perpetually
ned and restrained from influencing or impelling by force or
wise, or by threats or by threatening penalties or fines, any per-
r persons from appearing in said Court of Industrial Relations
edience to subpoena duly issued by said Court or other Courts
e State of Kansas, and giving their evidence or testimony be
said Court of Industrial Relations, or from filing complaints or
ing to said Court for such appropriate relief and remedies as
be provided therein under the provisions of said law for work-
employers or other persons and citizens of the State of Kansas;
d the said defendants and said persons are further perpetually
ined and enjoined from enforcing by threats, penalties, or other
gainst any of the members of the said labor union or any other
n, the provisions of the amendments or pretended amendments
e constitution of the said United Mine Workers of America,
ict Number 14, in the state of Kansas described and set forth
ragraph eighteen of the amended and supplemental petition in
ause, and from further attempting to put into effect or adopt
rt of the constitution or laws, rules and practices of said labor
said amendments or any amendments attempting to inflict
any member, pit committee, or local officer of said United
Workers of America, District Number 14, or any district officer
f as a punishment for or in consequence of any action taken by
any said member or officer of said labor union any penalty
for applying to said Court of Industrial Relations for any
right or remedy provided for therein, or for testifying as a
s before said Court of Industrial Relations under the provisions
l law;

And the defendants and said persons are further perpetually restrained and enjoined from conspiring or confederating together or with each other to injure in any manner any person or persons or any corporation in his, their, or its business, labor, enterprise, or peace and security by boycott or discrimination or by picketing or advertising by propaganda or other means because of any action taken by such person or persons or corporation under any order of said Court of Industrial Relations of the state of Kansas, or because of any action or proceedings instituted in said court, or because any such person or persons or corporation shall have invoked the jurisdiction of said court in any manner provided for under the provisions of said law.

And the defendants and said persons are hereby further perpetually enjoined and restrained from wilfully causing any person, firm or corporation engaged in the production of coal in said counties in the state of Kansas, or the operation of said mines to limit or cease operations for the purpose of limiting production with the intent of avoiding any of the provisions of said law, but nothing in this order shall be construed as restraining or restricting the right of any individual employee engaged in the operation of said mines to quit his employment at any time, but said defendants and persons are hereby perpetually enjoined and restrained from conspiring with other persons to quit their employment for the purpose of hindering, delaying, interfering with, or suspending the operation of any of the said coal mines, and from engaging in what is known as picketing or intimidating by threats, abuse or in any other manner any person or persons with intent to induce such person or persons to quit such employment, or deter or prevent any other person or persons from accepting employment, or from remaining in the employ of any of the persons, firms or corporations operating the said coal mines in said counties described in the petition herein;

And the defendant officers and said persons are hereby further perpetually restrained and enjoined from using his or their official position and by such means intentionally influencing, impelling or compelling any other persons to violate any of the provisions of said Chapter 29 of the session laws of the special session of the Legislature of the State of Kansas for 1920, and especially from intentionally or wilfully influencing, impelling or compelling any other person to leave or quit *their* employment, or to induce such person or persons to compel others to quit their employment or preventing any other person or persons from accepting employment or remaining in the employ of the industry of coal mining being carried on at this time in said counties;

It is further considered, ordered, adjudged and decreed that the said defendants pay the costs in this action.

The court retains jurisdiction of this proceeding for the purpose making such additional and supplemental orders as may be necess- y and appropriate for securing the enforcement of this judgment d decree.

A. J. CURRAN,
Judge of the District Court of
Crawford County, Kansas.

Attest:
EDNA M. BURNS,
Clerk of the District Court of
Crawford County, Kansas.

(Caption Omitted.)

cusation Charging Contempt of Injunction of the District Court of Crawford County, Kansas, Issued September 14, 1920.

ATE OF KANSAS,
Crawford County, ss:

Richard J. Hopkins, Attorney General of the State of Kansas, d C. A. Burnett, County Attorney of Crawford County, Kansas, h of lawful age, being duly sworn on their oaths, each say that the 14th day of September, 1920, this cause then and there pend- g before the District Court of Crawford County, Kansas, on the nsideration of said court the petition of the plaintiffs was found to true and the plaintiffs entitled to the injunction prayed for. A y of which injunction and decision issued and made by the court hereto attached, marked "Exhibit A" and made a part of this idavit.

Said affiants further state that on or about February 3d, 1921, in e counties of Cherokee and Crawford, and in the state of Kansas, e defendants, Alexander Howat, August Dorchy, Thomas Harvey, mes McIlwrath, John Fleming, Willard Titus, Thomas Cunning- m, Hearl Maxwell and Amos Standering then and there being icers of the District Board of District No. 14 of the United Mine orkers of America, a voluntary organization of labor union-, to- ther with George Young and E. E. Bosler, president and secretary, spectively, of Local Unions numbers 498 and 310 of said District o. 14 of said United Mine Workers of America, did intentionally, lfully and unlawfully violate the orders, requirements and com- nds of said injunction by then and there conspiring, confederat- ing and acting in conjunction with each other and their agents and representatives, the names of whom at this time are unknown to these affiants, by then and there intentionally d unlawfully directing and ordering the hindering and delaying d interference with the suspension of the operation of said coal nes in the counties of Cherokee and Crawford in the state of nsas, to-wit: the mines of The George K. Mackie Fuel Company, e of which is located near Roseland in Cherokee County, and the her near Cherokee in Crawford County, and by then and there

intentionally and wilfully interfering with and causing the suspension of the mining of coal in each of said mines, and by then and there unlawfully causing the miners and other members of said Local Labor Unions to unlawfully strike and quit their work at said mines, for the purpose of unlawfully hindering, delaying, interfering with and suspending the operation of said coal mines in said counties, and by then and there unlawfully intimidating and threatening said miners and other members of said Local Union, and all persons employed in said mines, to unlawfully quit their work at said mines for the unlawful purpose of inducing, deterring, preventing, impelling and intimidating said miners, employees and all persons employed in said mines from further accepting employment and remaining in the employ of said mining company at said mines; and by then and there intentionally and unlawfully carrying out the said conspiracy for the unlawful purpose of carrying into execution the said unlawful conspiracy and arrangement with each other.

And the said defendants did then and there further, and as a part of the same transaction and conspiracy, unlawfully prevent and cause said coal mines to cease operation and shut down, and to unlawfully cause said mines to cease to operate and continue to mine and produce coal with reasonable continuity and efficiency
9 with the unlawful intent of avoiding the provisions and requirements of the laws of the state of Kansas, and particularly the Act creating the Court of Industrial Relations of the State of Kansas and defining its powers and duties, to-wit: Chapter 29 of the laws of the special session of the legislature of the state of Kansas of 1920, and for the further unlawful purpose of violating the terms, requirements, commands of said injunction of this court.

And the said defendants further conspiring and confederating with each other as aforesaid, and with said persons by the same transaction and as a part and in pursuance of said conspiracy, intentionally, wilfully and unlawfully caused the said The George K. Mackie Fuel Company, a corporation, operating said mines in the production of coal in said counties, to cease the operation thereof and to limit its operations for the unlawful purpose of limiting production of coal in said mines, and thereby violate and avoid the provisions of said Chapter 29 of 1920, and the commands and requirements of said injunction, and with the unlawful purpose of causing the employees of said mines and the members of said local unions, the names of whom the affiants at this time do not know and can not ascertain before the filing of this affidavit, to conspire with and by agreements with each other unlawfully to quit their employment for the said unlawful purpose of hindering, delaying and interfering with and unlawfully suspending the operation and working of said coal mines, and with the unlawful purpose of inducing said miners, employees and said other persons to quit such employment and unlawfully to induce them from accepting employment and remaining in the employ of the said George K. Mackie Fuel
10 Company in operating the said coal mines in said county and state.

nd the defendants, and each of them, did further, as a part of said transaction and of said conspiracy, unlawfully use their al positions to intentionally and unlawfully influence, impel and el the said miners, employees, members of said local unions other employees, whose names the affiants are unable at this to learn, unlawfully to violate the provisions of Chapter 29 of Session Laws of the special session of the legislature of the state ansas for 1920, by then and there unlawfully, intentionally and lly influencing, impelling and compelling said miners, em- es and other persons unlawfully to leave and quit their em- ment and from accepting employment or remaining in the em- of the said George K. Mackie Fuel Company in operating the coal mines in said counties and state.

nd that said unlawful acts and violations of said Chapter 29 of Laws of 1920 and of the commands of this injunction, were mitted and accomplished by the said defendants by unlawfully piring and confederating with each other in meetings and con- ces held by the members of the District Board and the mem- thereof of District No. 14 of the United Mine Workers of rica in Crawford County, Kansas, and by then and there con- ing the action about to be taken, and by then and there deciding id conferences and meetings to cause said strike and cessation of on the part of said employees in violation of the commands of injunction.

nd by then and there unlawfully causing to be issued and issu- ing an order of said District Board or the officers thereof, directed to said local unions and officers and members, ordering and directing them unlawfully to cause the miners and the members of said local unions, as well as other persons employed aid mines, to strike and unlawfully to cease and quit their em- ment of the said George K. Mackie Fuel Company in the opera- of the mining of coal in said mines in said counties and state.

ffiants further state that said order is not in the possession or rol of the plaintiff in this action, and that the possession and rol of the same can not, at this time, be obtained.

nd affiants further state that after the issuance of said order, ssid, said order or a copy thereof was by the officers of said unions acting under the orders, directions and instructions ne said members of the said District Board, or said members of, on or about February 3, 1921, delivered to Local Unions bers 498 and 310, or the officers or members thereof, and was ursuance of said orders, commands and instructions of District d or said local unions delivered on said date to the superintend- or other representative of the said George K. Mackie Fuel Com- at or about said mines where said superintendent or other sentative were then and there engaged in the operation of, and that said order was also read to or communicated to miners and employees of said mining company, members of local unions unlawfully commanding, directing and ordering to strike and cease and quit their work in said mines.

nd that as a result and consequence thereof, the said miners and

employees, members of said local unions and all other
12 ployees of the said mining company, did then and the
unlawfully strike and quit their employment in operat
said mines under the direction and employment of said mini
company, and did then and there unlawfully cease operating sai
mines and the mining and production of coal therein, and did u
lawfully thereby limit the production of coal in said mines, a
unlawfully interfere with and suspend the operation of said co
mines in said counties of Crawford and Cherokee, and did unlawfull
prevent and interfere with the operation of said coal mines w
reasonable continuity and sufficiency, with the intent on the p
of the said defendants to violate the provisions of the said laws
the state of Kansas, and particularly Chapter 29 of the Laws of 192
and with the intent to violate the requirements, orders and co
mands of said injunction.

Affiants further state that defendants are each and all guilty
contempt of this court, and of the commands of this injunction, a
that process should be issued to bring said defendants before
court in order that the court may notice and properly punish s
act and contempts of its order.

And that the said Richard J. Hopkins further states that he is
duly elected, qualified and acting Attorney General of the state
Kansas, and the said C. A. Burnett further states that he is the d
elected, qualified and acting County Attorney of Crawford Coun
Kansas, and that all the aforesaid statements, averments and mat
are true nd correct.

RICHARD J. HOPKINS
C. A. BURNETT

13 Subscribed in my presence and sworn to before me
Richard J. Hopkins and C. A. Burnett this 7th day of F
ruary, 1921.

[SEAL.]

EDNA M. BURNS,
Clerk of the District Court of
Crawford County, Kans

Endorsements—#6166. Filed Feb. 7, 1921. Edna M. Bur
District Clerk.

Exhibit A consists of a journal entry of the permanent injunc
set out above.

Order.

(Caption Omitted.)

Now, on this seventh day of February, 1921, comes Richard
Hopkins, attorney general of the state of Kansas, and C. A. Burn
county attorney of Crawford County, Kansas, and presents to
court an affidavit, charging that Alexander Howat, August Dor
Thomas Harvey, James McIlwrath, John Fleming, Willard Tit
Thomas Cunningham, Hearl Maxwell, and Amos Standering ha

olated an injunction heretofore on the 14th day of September, 1920, ued in the above entitled action, and it appearing to me that there e reasonable grounds for believing that the said Alexander Howat, ugust Dorchy, Thomas Harvey, James McIlwrath, John Fleming, illard Titus, Thomas Cunningham, Hearl Maxwell, and Amos andering have violated said injunction and are in contempt of this ourt by unlawfully causing the employees or members of Local nions Nos. 498 and 310 to unlawfully strike and cease and quit eir employment and work in coal mines owned and operated by he George K. Mackie Fuel Company, located near Roseland and Cherokee, in the counties of Crawford and Cherokee, respectively, in the state of Kansas, with the unlawful purpose of hindering, delaying and interfering with the production of al in the operation of the said mines.

It is therefore, by me, ordered that an attachment be issued by the erk of the District Court of Crawford County, Kansas, sitting at ittsburgh, directed to the sheriff of Crawford County, Kansas, comanding said sheriff to forthwith arrest the said Alexander Howat, ugust Dorchy, Thomas Harvey, James McIlwrath, John Fleming, illard Titus, Thomas Cunningham, Hearl Maxwell, and Amos andering and bring them before me to answer the charge of conmpt of said court in violating said injunction.

A. J. CURRAN,
District Judge, Division 1.

Indorsements: No. 6166. Journal "S." 2-17-21. Page 234. iled Feb. 7, 1921. Edna M. Burns, district clerk.

Writ of Attachment.

(Caption Omitted.)

he State of Kansas to the sheriff of Crawford County, Kansas:

Whereas, on the 14th day of September, 1920, an injunction was ued in the case of the State of Kansas ex rel. Richard J. Hopkins, ttorney General, v. Alexander Howat, et al., enjoining the said lexander Howat, August Dorchy, Thomas Harvey, Robert B. Foster, James McIlwrath, John Fleming, Willard Titus, Thomas Cunningham, Hearl Maxwell, John Billings and Amos Standering from ordering, or directing the calling of a strike, and joining the said defendants from the performance of various other ts and matters set out in said order of injunction, and

Whereas, it appears that by affidavit duly filed herein that said lexander Howat, August Dorchy, Thomas Harvey, Robert B. Foster, James McIlwrath, John Fleming, Willard Titus, Thomas Cunngham, Hearl Maxwell, John Billings and Amos Standering have iolated said injunction.

Now, therefore, this order is to command you to forthwith arrest he said Alexander Howat, August Dorchy, Thomas Harvey, Robert B. Foster, James McIlwrath, John Fleming, Willard Titus, Thomas

Cunningham, Hearl Maxwell, John Billings and Amos Standera, and bring them before A. J. Curran, Judge of the District Court of Crawford County, Kansas, sitting at Pittsburg, to answer the charge of contempt in violating said injunction.

In witness whereof, I have hereunto signed my name and affixed the seal of said court this 7th day of February, 1921.

[SEAL.] EDNA M. BURNS,
Clerk of the District Court.

Indorsements: No. 6166. Filed Feb. 7, 1921. Edna M. Burns, district clerk.

Sheriff's Return.

STATE OF KANSAS,
Crawford County, ss:

Received this Writ of Attachment on the 7th day of February, 1921, at Four O'clock P. M. And on the 7th day of Febru-
16 ary, 1921, I served same by forthwith arresting the within named defendants to-wit: Alexander Howat, August Dorchy, James McIlwrath, John Fleming, Willard Titus and Hearl Maxwell, and now have them before the Court.

MILT GOULD,
Sheriff of Crawford County, Kansas.

Serving first person	$0.7
Serving additional 5 persons	3.7
Mileage, 52	5.2
	$9.7

MILT GOULD,
Sheriff of Crawford County, Kansas.

Answer.

(Caption Omitted.)

I.

Defendants above named, for answer to the accusation charging contempt of an injunction of the District Court of Crawford County, Kansas, issued September 14, 1920, deny each and every allegation therein contained.

II.

For further answer defendants in the above entitled cause state that the injunction issued September 14, 1920, was and is wholly and completely void and of no legal force or effect for the reason:

That said injunction was based upon and was issued for the purpose of enforcing and compelling compliance with an unconstitu-

tional, unlawful and invalid act of the legislature of the State of Kansas, denoted and known as Chapter 29, of the Laws of the Special Session of the Legislature of the State of Kansas, for 1920.

17 That these defendants and other persons whom they represent, claim and allege that the provisions of the said Court of Industrial Relations Act are violative of the constitutional rights of these defendants, separately and collectively, and all other persons mentioned and referred to herein, in this

(1) That said Act is in violation of Section One of the "Bill of Rights" constituting a part of the Constitution of the State of Kansas, which reads as follows:

"All men are possessed of equal and inalienable natural rights, among which are life, liberty and the pursuit of happiness."

(2) That in the particulars herein mentioned, said act is unconstitutional and void in that it violates that part of Section Six of the Bill of Rights forming a part of the constitution of the State of Kansas, which reads as follows:

"There shall be no slavery in this State, and no involuntary servitude, except for the punishment of crime, whereof the party shall have been duly convicted."

(3) That said act is unconstitutional and void and of no effect in that it violates the terms and provisions of the Constitution of the State of Kansas, wherein the fundamental law of the State creates, establishes and divides the powers of the State into three co-ordinate branches, viz: Executive, Legislative and Judicial, in that,

(*a*) The alleged acts of the Courts of Industrial Relations seek to impose and confer upon the alleged Court of Industrial Relations, Legislative, Executive and Judicial power.

(*b*) That it seeks to and does attempt to create a separate and distinct executive power, separate and apart from that created

18 and established by the Constitution of the State of Kansas, wherein it is provided that the executive power shall consist of a Governor, Lieutenant-Governor, Secretary of State, Auditor, Treasurer, Attorney-General and Superintendent of Public Instruction.

(*c*) That it attempts to create, establish and confer legislative power upon a body separate and apart from the legislative power *provided* something established by Section One, Article Two, of the Constitution of the State of Kansas, wherein it is provided that the legislative power of the State of Kansas, shall be vested in a House of Representatives and Senate.

(*d*) That said alleged act seeks to confer judicial power separate and apart from the power created and established by the Constitution of the State of Kansas as set forth in Section One, Article Three, wherein judicial power of the State of Kansas is vested in a Supreme Court, District Courts, Probate Courts, Justice of the Peace and such

other courts inferior to the Supreme Court, as may be provided by law.

(3) That by the terms, provisions and conditions of said alleged act, it purports and seeks to confer power of the three departments, viz: Legislative, Executive and Judicial, upon the said alleged Court of Industrial Relations, with a view, and for the purpose and intent that said Court of Industrial Relations may exercise such combined powers as are fixed and established in Articles One, Two and Three for the several departments of the State of Kansas as fixed by the Constitution. And in that respect and in the respects hereinbefore set out, said act is unconstitutional, null and void and of no effect.

19 (4) That said legislative enactment violates Section 2 of the "Bill of Rights" of the Constitution of the State of Kansas, which provides that all political power is inherent in the people, and all free Governments are founded on their authority and are instituted for their equal protection and benefit; and providing further that no special privilege or immunities shall ever be granted by the legislature, which may not be altered, revoked or repealed by the same body and providing that this power shall be exercised by no other tribunal or agency.

(5) That said legislative enactment violates Section 2 of the "Bill of Rights" of the Constitution of the State of Kansas, which provides that the people have the right to assemble, in a peaceable manner to consult for their common good, to instruct their representatives and to petition the Government, or any department thereof, for the redress of grievances.

(6) That said Legislative enactment violates Section 5 of the "Bill of Rights" of the Constitution of the State of Kansas, which provides that the right of trial by jury shall be inviolate.

(7) That said legislative enactment violates Section 10 of the "Bill of Rights" of the State of Kansas, which provides that no person charged with crime shall be a witness against himself, or be twice in jeopardy for the same offense.

(8) That said legislative enactment violates Section 20 of the "Bill of Rights" of the Constitution of the State of Kansas, which provides that the enumeration of Rights contained in the "Bill of Rights" of the State of Kansas shall not be construed to impair or deny others retained by the people, and that all powers not delegated in the said "Bill of Rights" remain with the people.

20 (9) That said legislative enactment violates Section 16 of Article 2 of the Constitution of the State of Kansas, which provides that no Bill shall contain more than one subject, which shall be clearly expressed in its title and that no law shall be revived or amended unless the new act contains the entire Act revived with the Section or Sections amended, and the Section or Sections so amended shall be repealed.

(10) That said legislative enactment violates Section 17 of Article 2 of the Constitution of the State of Kansas which provides that all laws of a general nature shall have a uniform operation throughout the State, and that in all cases where a general law can be made applicable no special law shall be enacted; and that whether or not a law enacted is repugnant to this provision of the Constitution shall be construed and determined by the Court of the State of Kansas.

(11) That said legislative enactment is void and of no effect in that it violates, and is in conflict with Section 2, Article 4 of the Constitution of the United States, which provides that the citizens of each State shall be entitled to all privileges and immunities of citizens of the several states.

(12) That said legislative enactment is void and of no effect in that it violates Article 6 of the Constitution of the United States, which provides that the Constitution, and the laws of the United States, which shall be made in pursuance thereof, shall be the Supreme law of the land and that the judges in every state shall be bound thereby, anything in the Constitution of the laws of any State to the contrary, notwithstanding, in that the legislative enactment now in question violates the foregoing provision of the
21 Federal Constitution, and other provisions of the Federal Constitution in pursuance thereof, as herein alleged.

(13) That said legislative enactment violates Article 5 of the Constitution of the United States, known as the 5th Amendment, which provides "that no person charged with offense shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law."

(14) That said legislative enactment violates Article 9 of the Amendment of the Constitution of the United States, known as the Ninth Amendment, which provides that the enumeration in the Constitution of the United States, of certain rights shall not be construed to deny or disparage others retained by the people.

(15) That said legislative enactment violates Section 1 of Article 13 of the Amendments to the Constitution of the United States, known as the Thirteenth Amendment, which provides that neither slavery or involuntary servitude except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

(16) That said legislative enactment is unconstitutional and void in that it conflicts with, and is in violation of the terms and provisions of Section 10, Article 1, of the Constitution of the United States, which provides, "No state shall pass a law impairing the obligations of contract."

(17) That by reason of the particulars mentioned, said Act is void and of no effect in that it comes within the inhibition of that part of the 14th Amendment to the Federal Constitution, which reads as follows:

"Nor shall any state deprive any person of life, liberty or pr
erty without due process of law, nor deny to any person wit
22 its jurisdiction, the equal protection of the law."

IV.

These defendants allege the facts to be that such of their act
are alleged by the plaintiff to be unlawful were based upon mat
growing out of disputes concerning terms and conditions of emp
ment, and their contract of employment, and by reason thereof, t
defendants say that the restraining order heretofore issued was
provident and unlawfully issued and null and void, in that it co
within the inhibition of the statutes of the State of Kansas, kn
as Section 7149 of the General Statutes, compiled and authentic
March 23, 1915, which reads as follows:

Section 7149. Restraining order or injunction not to be gra
in cases involving employers, employees or persons seeking emp
ment unless necessary to prevent injury, etc.; sufficiency
application, verification; acts not to be prohibited by such restr
ing order or injunction. That no restraining order or injun
shall be granted by any court of the state of Kansas, or a judg
the judges thereof, in any case between an employer and emplo
or between employers and employees, or between employees, or
tween persons employed and persons seeking employment, involv
or growing out of a dispute concerning terms or conditions of emp
ment, unless necessary to prevent irreparable injury to prop
or to a property right of the party making the application,
which injury there is no adequate remedy at law, and such pro
or property right must be described with particularity in
application, which must be in writing and sworn to by the appli
or by his agent or attorney. And no such restraining orde
injunction shall prohibit any person or persons
23 terminating any relation of employment, or from ceasi
perform any work or labor, or from recommending, advi
or persuading others by peaceful means to do so, or from atten
at or near a house or place where any person resides or work
carries on business, or happens to be for the purpose of peace
obtaining or communicating information, or of peacefully per
ing any person to work or to abstain from working or from
ing to patronize or to employ any party to such dispute, or
recommending, advising or persuading others by peaceful mea
do so, or from paying or giving to or withholding from any p
engaged in such dispute any strike benefits or other moneys or t
of value; or from peaceably assembling at any place in a l
manner and for lawful purposes; or from doing any act or
which might lawfully be done in the absence of such dispu
any party thereto.

These answering defendants further say that the court's injun
order heretofore issued was null and void and of no legal for
effect, by reason of the fact that each and all of the acts compl
of involve disputes between employers and their employees, an

court is without power or authority to issue or grant a restraining order, temporary injunction or final order in the premises by reason of the inhibition provided in Section 7149 of the General Statutes of the state of Kansas, for 1915, heretofore set out, which said section has not been repealed and is now in full force and effect.

V.

Further answering, defendants allege:

(*a*) That the court issuing said injunction did not have jurisdiction of the person or persons against whom said injunction was issued.

24 (*b*) That the court issuing said injunction did not have jurisdiction of the subject matter concerning which said injunction was issued.

(*c*) That said court did not have jurisdiction of the cause in which said injunction was issued.

(*d*) That said injunction is a violation of the constitution of the state of Kansas, and the Constitution of the United States, and the Federal Statutes made in pursuance thereof, in that it violates the rights of the defendants herein and the individuals against whom said injunction was issued of their right to strike.

(*e*) That said injunction is a violation of and an encroachment on the jurisdiction vested in the Federal Government of the United States by the Constitution of the United States, in that it seeks to control an industry engaged in the mining and shipping of coal in interstate commerce.

(*f*) That said injunction is a violation of and an interference with the jurisdiction of the Federal Government of the United States, and the Federal Statutes of the United States—in this, to-wit: That it is in contravention of President Wilson's Coal Commission Orders and Contracts made and entered into under the authority of the Federal Government and the duly appointed agents of the said Federal Government.

(*g*) That said injunction is a violation of the Constitution of the state of Kansas, and the Constitution of the United States and the Federal Statutes made in pursuance thereof in that it violates the rights of the defendants herein and the individuals against whom said injunction was issued of their right to strike for the purpose of compelling an adjustment of grievances.

(*h*) That said injunction violates the provisions of the
25 Constitution of the state of Kansas, and the Constitution of the United States and the statutes made in pursuance thereof in that it prohibits and limits freedom of contract of the persons against whom said injunction was issued.

VI.

For further answer defendants state that the accusation filed in the above entitled cause by the plaintiffs herein does not state facts sufficient to constitute a violation of the injunction issued September 14th by the court of Crawford County, Kansas.

VII.

For further answer defendants state that no strike or strikes have been called by the defendants herein nor any of them separately nor conjunctively for the purpose of hindering, delaying or diminishing the production of coal in the state of Kansas.

VIII.

For further answer defendants state that they have called no strike or strikes separately nor conjunctively nor entered into any conspiracy for the purpose of interfering with, violating, or in any way retarding the enforcement of the provisions of the law of the state of Kansas, denoted and known as the law creating the Court of Industrial Relations, but allege the facts to be that such acts of defendants as are charged to be unlawful were in fact lawful and were performed in the exercise of defendants' constitutional rights, and the constitutional rights of the membership of District 14 of the United Mine Workers of America.

IX

For further answer defendants state that no act or acts have been committed on the part of the defendants herein separately or conjunctively, violating any valid order of the District Court of Crawford County, Kansas.

X.

For further answer defendants state that the production or the continuity of production of coal has not been lessened, interfered with, or restricted by any act or acts of the defendants herein, and further allege that the public health, the public safety or the public welfare has in no wise been jeopardized, imperilled or injured through any act or acts of these defendants.

XI.

For further answer defendants state that the mine owners of the counties of Cherokee and Crawford have wilfully, unlawfully and intentionally confederated and arranged each with the other to exasperate and aggravate the miners of Cherokee and Crawford Counties, by their continuous and wilful refusal to effect a just wage

demand made by the miners of the aforesaid counties that said miners would be compelled to strike for the purpose of obtaining said just wage settlement, and by so doing the aforesaid mine operators could pretend and claim that said strike was instituted and invoked for the purpose of violating the injuction of the District Court of Crawford County, Kansas, and the laws of the state of Kansas.

XII.

For further answer defendant states that the strike or strikes heretofore called in Cherokee and Crawford Counties were caused by and wholly and directly in consequence of the injustice of the mine operators of the aforesaid counties.

XIII.

Further answering defendants allege that the prosecution of this action is not done in good faith, but on the contrary is being carried on for a selfish, insidious and ulterior motive, and to the great harm and detriment of these defendants, and the organization and the officials of the United Mine Workers of America for District Number 14.

XIV.

Wherefore, defendants pray that they and each of them be discharged and that they have judgments for their costs.

PHIL H. CALLERY,
REDMOND S. BRENNAN,
Attorneys for Defendants.

STATE OF KANSAS,
Crawford County, ss:

Comes now Alexander Howat, being first duly sworn on oath and states:

That he is one of the defendants named in the foregoing answer, and referred to in plaintiff's accusation, and is fully acquainted with the averments and statements contained in said answer in each and every particular, affirmatively and negatively, and the same are true to the best of his knowledge and belief, and he makes this verification for and in behalf of himself and all other answering defendants.

ALEXANDER HOWAT.

Subscribed and sworn to in my presence by Alexander Howat before me this 10th day of February, 1921.

[SEAL.] CARRIE S. FAYNE,
Notary Public.

My commission expires December 28, 1923.

28 Indorsements: The State of Kansas, ex rel. Richard J. Hopkins et al., plaintiffs, vs. Alexander Howat, Augu Dorchy et al., Defendants. No. 6166. Answer: Phil C. Callery Redmond S. Brennan. Filed February 10, 1921. Edna M. Burn District Clerk.

Bill of Exceptions

(Caption Omitted.)

Morning Session, February 15th, 1921.

Present: Hon. A. J. Curran, judge; Edna M. Burns, clerk; M Gould, sheriff.

And now on this day this cause coming on to be heard, pursu to adjournment of February 8th, 1921, and the state appearing its attorneys R. J. Hopkins, F. S. Jackson and C. A. Burnett, a the defendants appearing in person and by their attorneys Phil Callery and Redmond S. Brennen, and all parties announcing re for trial, and the following proceedings were had, to-wit:

The State, to maintain the issues on its part claimed called following witnesses in the following order, to-wit:

Whereupon the defendants, and each of them, after the State announced ready for trial and before any witnesses have been sw or any testimony taken, move the court to quash the accusation herein, and further move the court to dissolve and set aside order of attachment filed herein and discharge the defendants he

for the reason that no jurisdiction over the defendants,

29 either of them, has been lawfully secured by this court,

for the further reason that this court has no jurisdiction the subject matter out of which the writ of attachment herein issued, and for the further reason that said writ of attachment unlawfully obtained and unlawfully issued, and for the fur reason that the accusation of the plaintiff and the allegations said accusation does not constitute an offense under the laws of state of Kansas.

The defendants, and each of them, further objects to the in duction of any testimony for the reason that the Court of Indust Relations Act, out of which said injunction was issued and u which said injunction was based, is unconstitutional, null and v and as a further ground the defendants set out as fully as if porated in this motion all of the reasons set out in defendants' swer filed herein, which motion is by the court overruled; to wh ruling of the court the defendants, and each of them, at the t duly excepted and except.

At this time the defendants present an application in writing questing a jury, which request is by the court overruled, and fendants, and each of them, duly excepted and excepts.

The defendants, and each of them, call up the answer of the fendants in this case, and respectfully call the court's attentio the several paragraphs referring to interstate commerce, the L

Act, and to all of the paragraphs of said answer, and now ask the court to render judgment in favor of the defendants, and each of them, on the pleadings in this case. Which motion for judgment on the pleadings is by the court overruled, and the defendants, and each of them, duly excepted and except.

JOHN MORTON, being first duly sworn, testified as follows:

Direct examination.

By F. S. Jackson:

The defendants at this time, after the first witness for the State has been sworn and before any testimony has been introduced, object to the introduction of any testimony for the reason that the facts charged in the accusation filed herein do not constitute an offense under the constitution and laws of the state of Kansas, and for the further reason that it appears upon the fact of the State's pleadings that said writ of attachment for the arrest of said defendants was unlawfully obtained and unlawfully issued, and that this court is without jurisdiction of either the person of the said defendants or of the subject matter out of which said writ of attachment has been issued. Which objection is by the court overruled; to which ruling the defendants, and each of them, duly excepted and except.

Q. State your name?
A. J. R. Morton.
Q. Where do you live?
A. Scammon, Kansas.
Q. How long have you lived there?
A. About thirty years.
Q. What is your business?
A. Superintendent of the Mackie Fuel Co.
Q. Were you such superintendent of such mine on or about the 3d day of February, 1921?
A. Yes, sir.
Q. Were you in charge of the mine at that time?
A. Yes, sir.
Q. What were your duties with reference to the operation of the mine, just in a brief way?
A. To look after it in a general way and keep it going in good shape.
Q. State to the court if anything unusual happened there the morning of that day with reference to the continuation of work?
A. The mine foreman notified me over the phone there was a strike.
Q. Who is the foreman?
A. George Jenkins.

Defendants object to answer of witness where he says the "mine foreman told me over the phone there was a strike" and moves the

court to strike same from record for the reason it is hearsay, wh
objection is sustained.

Q. Did you talk with him frequently over the phone?
A. Yes, sir.
Q. You were able to recognize his voice over the phone?
A. Yes, sir.
Q. Did you talk with him that morning?
A. Yes, sir.
Q. Where were you when you talked with him?
A. At home.
Q. Did you go down to the mine that day?
A. Yes, sir.
Q. About what time was it?
A. About nine o'clock.
Q. Did you have any conversation or any communication
any of these defendants that day?
A. No, sir.
Q. Did you have at any time?
A. No, sir.
Q. How long was the mine shut down, if it was shut down?
A. It was shut down until Wednesday.
Q. What day of the week was the 3d?
A. The 3d was on Friday.
Q. Thursday, was it not?
A. No, sir, Friday.
Q. The 4th then instead of the 3d?
A. Well, the 4th, then.
Q. The mine was shut down until the 9th?
A. Yes, sir.
Q. Or the next Wednesday, you say?
A. Till Wednesday, I think, yes, sir.
32 Q. What happened then?
A. Well, we worked on the 9th, or Wednesday.
Q. Is the mine in operation now?
A. No, sir.
Q. When did it shut down after Wednesday the 9th?
A. They took their tools out that day, cleaned up.
Q. And the mine has not operated since?
A. No, sir.
Q. Then all your information about it came from the fore
A. Yes, sir.
Q. What county is that mine in?
A. Cherokee County.
Q. And state of Kansas?
A. State of Kansas, yes, sir.
Q. Are you superintendent of any other mine?
A. Yes, sir, mine J, Cherokee.
Q. In what county is that situated?
A. Crawford County.
Q. And this state?
A. Kansas, yes, sir.

Q. What was the condition there on the 11th day of February concerning work?

A. The mine foreman notified me they was going to strike, over the phone, also.

Q. The same foreman?

A. No, sir. Fred Goldsberry.

Q. You know his voice?

A. Yes, sir.

Q. Is that the usual and ordinary way of communicating with him?

A. Yes, sir.

Q. Did you see any of these defendants, or any one representing them, yourself, concerning this?

A. No, sir.

Q. So all of your information regarding that mine come also from your foreman?

A. Yes, sir.

Q. And when did that mine shut down, if it did?

A. That mine wasn't working until the 9th. The 9th was the first day it worked, 4th to the 9th, they notified the mine foreman and the mine wasn't working that day.

Q. You mean you notified him?

A. No, they notified the mine foreman there would be a strike.

Defendants object to answer of witness and move the court to strike same from record for the reason it is hearsay, which objection is sustained.

Q. How about the condition since the 9th?

A. Haven't worked any since the 9th when they cleaned up. Took their tools out from there also.

Q. On the same day on which the other mine was cleaned up?

A. Yes, sir.

Q. How many men were employed in this mine? These mines?

A. Well, a little better than 100 in both mines.

Q. What is about the average production of those mines?

A. Both mines?

Q. Yes, sir.

A. About 300 ton, a little better.

Q. You mean per day?

A. Yes, sir.

Q. What is it that is produced in those mines?

A. Coal.

Q. What kind of coal?

A. Bituminous coal.

Q. Has it a name in the commercial world?

A. Cherokee lump coal and slack and lump.

Cross-examination.

By R. S. Brennan:

Q. Did you get any word in any manner except over the pho
A. No, sir, not until I had been informed over the phone. I
word from the mine foreman after I got out to see him.
Q. The men went out on a strike?
A. That is what he notified me.
Q. As I understand your testimony, on the 1th of February
mines were shut down, both of them?
A. On Friday. The Cherokee mine wasn't working
Friday.
Q. And what about the other?
A. It was working on that day.
Q. Did that apply to both mines?
A. My understanding is, yes, sir; they notified the mine fore
of both mines.
Q. Well, what did you do then about getting labor to run
mines?
A. I didn't do anything.
Q. Have you done anything since to get labor to run the mi
A. No, sir.
Q. You are the man who would have charge of it for the mi
A. Yes, sir.
Q. Have you directed any one to get labor to run the mines
A. No one applied for work around the mines.
Q. Your answer is you have not directed anyone to get labor
A. I have not, no, sir.
Q. Were you running full time since last November?
A. No, sir.
Q. What time were you putting in?
A. Well, we run full time till about two weeks ago.
Q. Then what happened then?
A. No orders.
Q. Are you acquainted with the other mines in these coun
Cherokee, Osage and Crawford?
A. Not acquainted in Osage County.
Q. Acquainted in Cherokee and Crawford?
A. Yes, sir.
Q. What is the condition there with regard to their not ru
full time?

Plaintiff objects to question for the reason it is not cross-exam
tion, which objection is sustained, and defendant excepted
excepts.

Q. Do you handle all the orders that come in for coal from
two mines?
A. No, sir, none.
Q. You said something in direct examination about h
charge of the mines?

A. Yes, sir.
Q. Does that include having charge of the shipping of the coal from the mine?
A. No, sir.
Q. Do you know anything about where the coal goes?
A. No, sir.
Q. You know it doesn't stay there, don't you?
A. Yes, sir.

Redirect examination

By F. S. Jackson:

Q. Did you have use for the coal that you were mining on those particular dates, do you know?
A. On the particular days they were working, yes, sir.

Recross-examination.

By R. S. Brennan:

Q. What use did you have?
A. I had orders to work.
Q. Did you have orders to ship the coal out?
A. I don't get the orders to ship it. It comes through the office.
Q. Well, you said you were in charge of the mine?
A. Certainly.
Q. Well, then if you had charge, what was to be done with the coal?
A. To be loaded.
Q. For shipment?
A. Flats, yes, sir.
Q. Do you know where it was to go to?
A. No, sir.

Defendants and each of them, now moves the Court to strike from the record the testimony of this witness for the reason that that part with regard to telephone communication to him is hear say, is not binding upon any of the defendants in this case and does not tend to prove or disprove any of the issues in this action, and for the further reason that it states a conclusion of the witness.

Which objection is by the Court over-ruled, to which ruling defendants, and each of them, at the time, duly excepted and exceptions.

GEORGE JENKINS being first duly sworn testified as follows:

Direct examination.

By F. S. Jackson:

Q. State your name?
A. George Jenkins.

Q. Where do you live?
A. I live in Scammon.
Q. How long have lived there?
A. About thirty years.
Q. What is your business?
A. Mine foreman.
Q. For what mine?
A. Mackie Fuel Company No. H.
Q. Where is that mine located?
A. Located in Scammon, or about three miles and a half or four miles from Scammon.
Q. How far from Roseland?
A. About two miles.
Q. What county?
A. Cherokee County.
Q. State?
A. Kansas.
Q. Were you mine foreman there on the 3rd and 4th of February, 1921?
A. Yes, sir.
Q. Were you present at the mine that day?
A. Yes, sir.
Q. State if anything unusual happened there that day with reference to the working of the mine?
A. I was notified by the Secretary-President of Local 298 I believe is the number of that local, that there would be a strike at that mine until the case of Carl Mishmash was settled.
Q. Was that notice given you in writing or orally?
A. Orally.
Q. Who told you about it?
A. George Young and John MacNalley.
Q. Did the men come to work that morning?
A. Yes, sir.
Q. Did they go to work?
A. No, sir.
Q. Well, tell the Court what was done when they came to the mine?
A. They notified me that there was a strike on that morning until the case of Carl Mishmash was settled.
Q. You have already said that. Tell the Court just what happened when the men came?
A. Well, they called a meeting I understand.

Defendant objects to witness stating what he understands, which objection is sustained.

Q. Go ahead and tell it in your own way?
A. Well, they all went home that morning.
Q. Did anyone direct them to go home?
A. Yes, sir.
Q. Do you know who directed them to go home?
A. Yes, sir.

Q. Well, who was it?
A. John McNalley and George Young.
Q. And they occupy some position in the local, or there at the
ne, did they?
A. A. In the local, yes, sir.
Q. Do you know what position they occupy in the local union?
A. One is Secretary and the other is President.
Q. Perhaps you better tell the Court, if you know, just where
y stood and what they said to the men?
A. You understand this is what they said to the men over in the
h shanty. What they said to me was in the engine room.
Q. Then they came to the engine house and talked to you?
A. Yes, sir.
Q. Was that where they told you there was going to be a
strike?
A. Yes, sir
Q. Then they went back to the wash house?
A. They went home.
Q. You said they went to the wash house? Where did they go?
A. They came from the wash house?
Q. Then the men did not appear for work?
A. They appeared for work and then went home.
Q. They didn't go down in the mine?
A. No, sir.
Q. Have you talked with any of these officers since that date?
A. Well, yes sir, I have talked with them.
Q. About this matter, I mean?
A. No, I haven't talked since then about it.
Q. Were you there at the mine on the 9th?
A. Yes, sir.
Q. What was said there that day, if anything, between you and
of these officers of the local union?
A. Nothing.
Q. Well, tell the Court how it was arranged that those men went
in the mine and cleaned up, if they did, without saying any-
ng to any one?
A. I was notified the same morning, Friday morning, the 4th,
they would give us till Monday to clean up, or to get settled,
er. If it wasn't settled by that time they would call for a clean

Q. Who told you that?
A. The same ones, Young and McNalley
Q. The same officers of the local union?
A. Yes, sir.
Q. Where were you when they told you that?
A. Same place and same time.
Q. That was a part of the same conversation?
A. Part of the same conversation.
Q. Well, then what happened on the 9th? What was done
there on the 9th?
A. They came to work and went to work on the 9th.

Q. What did they do?

A. Cleaned up and took their tools out.

Q. Explain to the Court what you mean by a clean-up?

A. Well, they loaded all the coal that they had shot loose, course timbered their places, brought their tools out and quit.

Q. What is the purpose of a clean-up in a mine?

A. Well, it might be for several purposes.

Q. Explain them briefly to the Court?

A. In this case it was regarding a strike. They was st
It might be when a mine is finished that they clean up an
it, vacate it.

Q. Well, it is the regular way to treat a mine, is it, when
not going to be any work in it for some time?

To which defendants object for the reason it is leading a
gestive and calls for the conclusion of the witness; which ob
is sustained.

Q. State whether or not that is the custom when a mine is
idle for some time, to have it properly cleaned up?

Objected to for same reasons last above stated. Same rul

Q. State what the custom was, if there was any?

A. Well, as I said, on the morning of the 4th, they calle
clean-up.

Q. Well, you don't understand the question. We are not
you what was done in this case, but trying to show b
ing up a mine what it is done for and how it is done?

A. Some times it is done for striking and some ti
done for the shaft to finish. The mine is finished and they
and take their tools out.

Q. Is it usual to clean up a mine when there is not going to
work in it for some time?

A. No, sir.

Q. What do you do in that case?

A. Well, we wait until we work again.

Q. Is there any rule about how long a mine shall stand
notice to the men with reference to when the men return
about how long a mine is going to stand idle.

A. No, sir.

Q. There isn't any such rule?

A. No, not under ordinary circumstances.

Q. Have you stated what the purpose was in cleaning
mine?

A. At this time?

Q. Yes, sir

A. Yes, sir

Q. What?

A. Strike.

Q. Why was it necessary to clean up a mine because t
going to be a strike?

A. Well, they ordered a clean-up. I don't know that it was necessary.
Q. Who ordered it?
A. George Young and John MacNally.
Q. And do they own or have any interest in the mine?
A. No, sir.
Q. What is their interest in the mine?
A. Officials of the organization.
Q. What organization?
A. U. M. W. of A.
Q. Well, do you know of any interest or any obligation they had to clean up the mine?
A. They said that they had got orders from the district officers.
Q. Was that said to you?
A. Yes, sir.
Q. They told you that?
A. Yes, sir.
Q. When did they tell you that?
A. On the morning of the 4th.
Q. Well, what interest has the district board, if any, if you know, in the cleaning up of this mine?
A. They haven't any that I know of.
Q. Why did they order it done then if you know? Did they say anything about it?
A. I think I stated, in regards to the case of Carl Mismash.
Q. Well, were those miners who work in your mine members of any local union or association?
A. They are members of this union.
Q. What union?
A. U. M. W. of A.

Cross-examination.

By R. S. Brennan:

Q. I understood you to say that Young and McNalley told you about the strike order while you were at the engine house?
A. Yes, sir, in front of the engine house, yes, sir.
Q. You were not then at the wash house when they were talking to the men, were you?
A. No, sir.
Q. You didn't hear anything that was said by them at the wash house that day?
A. No, sir.
Q. You only know what occurred over at the engine house?
A. Yes, sir.
Q. You said something about giving time to settle the Mishmash case? Did you handle that case for the men?
A. Yes, sir.
Q. What was the case?
A. That was regards to his wages.
Q. Well, what about it. What was the controversy?

A. He claimed he had become 19 years old, the age to get man wages.

42 Q. What wage was he entitled to at 19?

A. He was entitled to $5.00 a day at that time.

Q. What was he getting?

A. $3.65.

Q. They had been owing him $5.00 a day for a long time?

A. No, not very long, no.

Q. For eight months to be exact?

A. Since when?

Q. I am asking you?

A. From what date?

Q. About eight months ago?

A. Starting from this date?

Q. No, didn't they ask you eight months ago about that.

A. Yes, sir, more than that.

Q. Didn't you settle that about two years ago?

A. The case came up before me for settlement, yes sir.

Q. When did it first come up?

A. He demanded it of me on March 22nd.

Q. What year?

A. 1918.

Q. What did you do?

A. I didn't do anything, not that time.

Q. And did he demand $5.00 a day then?

A. Yes, sir.

Q. Well, did you set any date at which you would pay him $5.00 a day?

A. Not at that time, no.

Q. Did you ever state you would give him $5.00 a day at a certain time or certain date?

A. The Company agreed to give him $5.00 a day.

Q. Well, of course, everything you say here you are acting for the Company?

A. Well, I am not running it yet.

Q. You did run the part you are telling us about?

A. Yes, sir.

Q. You are not running it in your own interest?

A. No, sir.

43 Q. Wasn't it a sort of an agreement between the local and the U. M. W. A. and your company?

A. They agreed to give him $5.00 a day after that.

Q. Now, how soon after that?

A. I don't remember the date.

Q. Well, just approximate it?

A. I don't remember the date.

Q. Well, have you any recollection at all as to the number of months?

A. No. It was along about that same time the case was taken up and went through its regular course.

Q. Then you didn't pay him $5.00 a day for a year and a half or two years, is that right?
A. No, that is not right.
Q. When did you first pay him $5.00 a day?
A. On the 1st of April.
Q. Speak up. We don't want any secret about it?
A. First of April.
Q. What year?
A. 1918.
Q. Then how long did you continue to pay him $5.00 a day?
A. As long as he stayed there.
Q. How long was that?
A. I don't know how long he stayed after that.
Q. Well, can't you approximate it?
A. I haven't got the books. No, I can't.
Q. Hadn't he stated to you that he had reached the age of 19 in the August of the previous year?
A. In March.
Q. Well, now, do you mean to say March, he stated, or when he reached that age?
A. On the 22nd of March he demanded of me men's wages.
Q. 1918?
A. Yes, sir.
Q. Beginning then, or did he say that he had previously reached the age of 19?
A. He had reached the age of 19. I didn't question him any further.
Q. When did he state he had reached the age of 19?
A. I don't remember. At that time he stated that he was 19 and wanted men's wages.
Q. Didn't he say he had reached the age of 19 the previous August?
A. No, didn't say that.
Q. Did he give you any date?
A. No.
Q. Did he say he just reached it that day?
A. No, he said he was 19 years old and demanded men's wages.
Q. Did he demand back pay?
A. Not from me.
Q. Did he at any time?
A. I think so.
Q. Don't you know that the joint board that adjusted wages had signed an agreement that at the age of 19 he would get $5.00 a day?
A. Yes, sir.
Q. When did you first get word as to how much back pay he claimed at the $5.00 a day rate?
A. I don't remember. I don't know. I wasn't interested in that.
Q. Well, you know he did demand it?
A. It had passed beyond my hands at that time.
Q. You are not answering my question. I am asking you when you first learned that he demanded back pay?

A. I don't remember.
Q. Can you approximate the time?
A. I can't remember.
Q. Is your memory any better on the questions that you answer for these gentlemen than it is for me?

Objected to.

I would like to know right now if there is anything the matter with his memory?

The state objects to question and objects to the manner of asking questions. No ruling.

45 Q. You know he was paid $5.00 a day for some months?
A. Yes, sir.
Q. And was not paid $5.00 a day for any back period from the date he claimed he reached the age of 19?
A. I think not.
Q. You know this, that the claim for back pay was covering a period of eight months?
A. They say something like that. I heard something like that.
Q. He never has been paid?
A. Not that I know anything about.
Q. Could he be paid without you knowing it?
A. Yes, sir.
Q. Who would pay him?
A. The company.
Q. Ever hear of them paying him?
A. No.
Q. You know until lately he has been demanding it?

Objected to. No ruling and no answer.

Q. About the matter of clean up you testified to. The men as I understand it go in there and get out the coal that is loose and get it out for shipment and are paid for it?
A. Yes, sir.
Q. And you say they ordered the clean up?
A. Yes, sir.
Q. You ordered the clean up, isn't that a fact?
A. I ordered it?
Q. Yes, sir.
A. No, I didn't order it.
Q. Did you deny the men the right to go in there?
A. No, sir.
Q. Were the men paid for that day's work?
A. Which day's work?
Q. The clean up?
A. Sure, paid for the coal.
Q. Could they go in and clean up without the permission of the mine owners?
A. No.
46 Q. So it was with your permission or the permission of the company they went in and cleaned up?

A. They went in and loaded their coal out.
Q. Have you hired any men since then?
A. No, sir.
Q. Have you tried to hire men?
A. No.
Q. Why didn't you try to hire men?
A. It wasn't any use.
Q. Why?
A. Why, we have got an organization here.
Q. Have you got orders for coal?
A. I don't know.
Q. Then you wasn't told to try to run the mine, then?
A. No.
Q. Do you know the mine had been idle considerable before this strike?
A. Three days before the 4th we was idle.
Q. Why?
A. Didn't have any orders, I suppose.
Q. And had you been idle off and on since the 1st of January?
A. No, sir.
Q. Had there been any time at all off since the first of January except the three days you have now mentioned?
A. Well, not very much. I don't know that there was. I can't recall that there was very much.
Q. You know there was some time? Is that right?
A. Well, yes, sir.
Q. And have been off some time since January 1st, 1921?
A. No, we been working steady, practically steady, up until the matter.
Q. You handle generally the relations with the union officials at this mine?
A. Yes, sir.
Q. So that whatever the company wishes to communicate would in the ordinary course of business be communicated through you?
A. Yes, sir.
Q. And the attitude of your company towards the men would be conducted mainly through you? Is that right?
A. Yes, sir.
Q. Have you been notified by your company, or any officer thereof, or any director or owner of the mines where you are employed to exasperate these men into striking?
A. No.
Q. Has that been your attitude, that you would just refuse to settle the Mismash matter, and other cases, just to provoke the men into quitting their employment?
A. No
Q. The men expected the clean up on the 4th and didn't get the order until the 9th?
A. They wanted to clean up on Monday following.
Q. Well, Monday, February 7th, would you say?
A. Yes, sir, I guess that would be it.

Q. Why didn't they get the clean up order then on the 4
or 5th?

A. I don't know. Didn't have orders to work, I guess.

Q. You mean you didn't have orders for coal?

A. I didn't have orders to work. I don't know anything abo
orders for coal.

Q. You didn't have orders to get out any coal?

A. No.

Q. When did you get the order, on the 9th?

A. Yes, sir.

Q. That is when you ordered a clean up?

A. Ordered a clean up. I never gave them no clean up. Ju
work.

Q. They did go in and clean up?

A. Yes, sir.

Q. Got out the coal?

A. Yes, sir.

Q. And you paid them for it?

A. No, I didn't.

Q. Now, all this controversy that you have spoken about, th
Mismash case, while it was pending, you know that was likely
cause trouble with the men?

A. No, I didn't know it.

Q. Why didn't you settle with them or take it to the Court
Industrial Relations that you believe in?

18 A. I performed my part of it and it was carried further o

Q. What do you mean, your part?

A. I couldn't settle with the the pit committee and it was carr
to the superintendent.

Q. You took it up with your superintendent?

A. They took it up.

Q. Now, have you or your superintendent, or any officer or own
of the company, been arrested for not taking this case to the Co
of Industrial Relations?

The State objects to question for the reason it is incompetent,
relevant and immaterial, which objection is sustained, and defen
ants excepted and except.

Q. Do you know of any of your company at all doing anythi
to take this case to the court prior to the time of this strike?

Same objection as last above made. Same ruling and same e
ceptions.

Redirect examination.

By F. S. Jackson

Q. Now, you stated this case took its regular course through t
different boards. What is that, what do you mean by that?

A. I mean when the pit committee and mine foreman can't set
on a case it is carried higher up.

Q. Well, by what authority is that done?
A. The organization takes it up further.
Q. Is there any contract or any agreement by which that is done?
A. Yes, sir, that is the regular way they do it. They have an order that carries it right through.
Q. Is that by an order of the district board or local union, or is it in the contract?
A. It is in the contract.
49 Q. Then this case was taken up in accordance with the contract?

To which defendant objects for the reason it is leading and calls for the conclusion of the witness; which objection is sustained, and the State excepts.

Q. Well, was this case settled in accordance with the contract?
A. Yes, sir.
Q. Is your mine operated under a contract with the labor union?
A. Is the mine operated under a contract?
Q. Yes, sir, does the union mine workers have a contract with your mining company under which the members work?
A. Yes, sir.
Q. And that is what you have been talking about here, the way this claim came up and was settled?
A. Yes, sir.
Q. And do you know whether it is operated in the form of a closed shop or open shop?
A. Closed shop.

Recross-examination.

By R. S. Brennan.

Q. You just stated about this case being settled in accordance with the contract. Now, why wasn't the Mismash case settled for back pay in accordance with the contract?

To which the State objects for the reason it is not cross-examination; which objection is by the court sustained, to which ruling defendants, and each of them, duly excepted and except.

Q. State, if you will, what was your duty with regard to settling this Mismash case through the channels outlined in that contract?

Objected to for the reasons last above stated and for the further reason it is incompetent, irrelevant and immaterial, which ob-
50 jection is sustained, and defendants duly excepted and except.

Q. Did any one connected with the district board talk to you before the men left their employment, as to why they were leaving?
A. Any one connected with the district board?
Q. Yes, sir, of the U. M. W. A.?
A. No.

At this time the defendants, and each of them, move the court
strike from the record the testimony of this witness for the rea
that said testimony is hearsay and conclusions of the witness; t
by his own statements he did not hear any remark made by any
the defendants, or any one in privy with them, or any of the m
who left their employment; and for the reason his testimony does
prove any charge in the accusation herein, and his testimony d
not tend to prove or disprove the commission of any act upon
part of these defendants, or any of them, that could legally be
joined; which objection is by the court overruled, and the defe
ants, and each of them, duly excepted and excepts.

FRED GOLDSBERRY, being first duly sworn, testified as follows:

Direct examination.

By F. S. Jackson.

Q. What is your name?
A. Fred Goldsberry.
Q. Where do you live?
A. Cherokee.
Q. How long have you lived there, Mr. Goldsberry?
A. Four years.
Q. What is your business?
A. Mine foreman.
Q. For what mining company?
A. Mackie Fuel.
Q. Can you give the real name of that company?
A. George K. Mackie Fuel Company.
51 Q. Fuel Company?
A. Yes, sir, Mine J.
Q. In this county, Crawford County, Kansas?
A. Yes, sir.
Q. Were you occupying that position on or about the 4th da
February, 1921?
A. I was.
Q. Did anything unusual happen at your mine that day rel
to the mine working, the men working in the mine?
A. No, we wasn't working that day.
Q. The next day, did anything happen the next day?
A. No, we didn't work the next day.
Q. That is the 5th?
A. Yes, sir.
Q. When did you work?
A. We worked on the 9th.
Q. You were idle the 7th and 8th?
A. Yes, sir.
Q. Why were you idle?
A. No orders, I suppose.
Q. On the 8th and the 9th; did you say 8th and 9th, or o
9th?

A. On the 9th.
Q. Well, what happened on the 9th?
A. Well, we worked.
Q. Full time?
A. Yes, sir, all day, eight hours.
Q. Well, tell the court what happened?
A. Well, that is about all that happened.
Q. Did you have any communication that day with the members of the local union?
A. Yes, sir, did that morning.
Q. What was that?
A. Well, they asked me if I was going to measure that day.
Q. Who asked you that?
A. Well, there was one of the committeemen or two that asked me.
Q. What is his name?
A. Well, Greenberg was one.
Q. Who was the other?
A. I wouldn't say for sure whether any other of the committee or not.
Q. What does that mean, ask you if you were going to measure that day?
A. Well, that is to get out dead work for them.
Q. Well, what did that have reference to?
A. Well, it had reference that they was quitting work.
Q. Well, we don't know about it. You have to tell us, you know. They asked you what?
A. If I would measure.
Q. What did you say that was for?
A. That was so they could get their dead work in. They was cleaning up, quitting that day, taking their tools out.
Q. Who told you anything about their quitting and taking their tools out that day?
A. Well, I was notified on Friday before that.
Q. That was the 4th of February?
A. Yes, sir.
Q. Who notified you?
A. The secretary and president of the local.
Q. What local is that?
A. 310, I believe.
Q. Of what organization?
A. U. M. W. A.
Q. Did they notify you orally or in writing?
A. In writing.
Q. Have you got that notice with you?
A. No, I haven't.
Q. Where is it?
A. I couldn't tell you.
Q. Did they leave the notice with you?
A. No, just handed it to me and let me read it.
Q. Then took it back again?
A. Yes, sir.

Q. Well, tell in substance what the notice said?
A. Well, it was more of a communication to——

Defendants object to question for the reason it is not the be
dence and not binding on any of the defendants in this case,
objection is sustained.

Q. Who was it signed by? Who had this notice at that
A. Elmer Bossmer and Cicero Landen.
Q. Were they officers of any of the organizations?
A. They were.
53 Q. What organization?
A. M. W. A.
Q. Local or district?
A. Local.
Q. What officers were they?
A. President and secretary.
Q. Was this notice signed by them?
A. No, sir.
Q. They had it?
A. They had it.
Q. They asked you to read it?
A. Yes, sir.
Q. You did read it?
A. Yes, sir.
Q. Well, whose names were attached to it?
A. Alexander Howat and August Dorchey.
Q. Did you know their signatures?
A. Well, I guess not any more than just seeing it.
Q. Well, you have seen Mr. Howat's signature often h
you?
A. Yes, sir.
Q. Know his writing if you would see it?
A. Well, I don't know as I would know his signature. I co
say either one.
Q. Couldn't say?
A. No. Anyone might write it and I wouldn't know it.
Q. You just know that this paper purported to be signe
them?
A. Yes, sir.
Q. What did this paper say?

To which defendants, and each of them, object, for the rea
is not the best evidence, which objection is sustained.

Q. What day was this?
A. This was on the 4th.
Q. 4th of February?
A. 4th of February.
Q. What time in the day was it?
A. Well, it was long about, I should judge, 8 or 8:30.
Q. And where?
A. At the mine.

Q. Was the mine working that day?
A. No.
Q. How long before that since the mine had worked?
A. Why, we hadn't worked the day before on Thursday,
54 but we had worked Monday, Tuesday and Wednesday that week.
Q. Would you know this paper if you would see it?
A. Yes, sir, I believe I would.
Q. You know that much about Mr. Howat's signature, do you?
A. Yes, sir.
Q. Will you look at this document which is marked Exhibit 1 and state if that is the paper handed to you as you have testified to?

To which the defendants object, for the reasons last above stated, and further for the reason that this witness has testified that he does not know the signature of Alexander Howat and that he did not know the paper presented to him bore the signature of Alexander Howat; that it might have been written by any other person; which objection is by the court overruled; to which ruling defendants, and each of them, at the time, duly excepted and except.

A. If it isn't, it is one exactly like it.

By R. S. Brennan:

Q. Did you know an exact duplicate was sent to the other mine?
A. No, sir.

By F. S. Jackson:

Q. Who handed it to you?
A. Well, Mr. Lampton handed it to me.
Q. Who is he?
A. He is president of the local.

The State now offers in evidence paper marked Exhibit 1; to which the defendants object, for the reason it is incompetent, irrelevant and immaterial, not the best evidence, and for the reason
it is not evidence against Alexander Howat or August Dor-
55 chey, or any of these defendants in this case; for the reason it is hearsay, and for the reason this witness has testified he does not know the signature of Alexander Howat and that it might have been written by anyone else as far as he knew; no positive, conclusive identification and does not prove or tend to prove any issue in this case, and for the further reason that this is inadmissible in evidence in any case in which these defendants are parties privy to this suit, and for the reason it was not properly secured by the plaintiffs, the State, herein, and with regard to the last ground of objection defendants state they would like to put Mr. Jackson on the stand to prove how he got it and where he got it, which objection is by the court overruled; to which ruling defendants, and each of them, duly excepted and except.

The defendants, and each of them, at this time move to strike

from the record the testimony of this witness for the reason
of said testimony is incompetent, hearsay, and conclusion
witness and the answers of this witness clearly disqualify hi
answering the questions propounded, and none of the testin
this witness is binding against any of the defendants, and d
tend to prove or disprove any act which could be enjoined
court and does not tend to prove or disprove the commission
act covered by the accusation herein, and all of the testimon
together does not prove or disprove the commission of any ac
could be the basis of a contempt charge as violative of t
tempt order of the court in this case; which objection is ov
and the defendants, and each of them, duly excepted and

56 GEORGE YOUNG, being first duly sworn, testified as

Direct examination.

By F. S. Jackson:

Q. You may state your name.
A. George Young.
Q. Where do you reside?
A. Scammon, Kansas.

R. S. Brennen, counsel for defendants, at this time adv
witness that it is his constitutional privilege to refuse to ans
question that is asked by the attorneys for the state since
one of the defendants in this case and you may exercise tha
lege.

Q. How long have you lived there?
A. I judge between thirty-five and forty years.
Q. What is your business?
A. Coal miner.
Q. Are you a member of the Mine Workers' Union?
A. Yes, sir.
Q. What union?

The witness has now testified that he is a member of t
Workers' Union and this accusation runs against all the
of the Mine Workers' Union, and the defendants, and each
object to any testimony whatever from this witness, for the
he is shown to be a member of the union, United Mine Wo
America, and an officer of that organization, and he is shown
contempt order in this case to have been enjoined togeth
the other defendants, and that his testimony herein adduce
that he is in relation of privity with the defendants herein
being called upon to give testimony against himself, and h
mony cannot be binding against the defendants herein, whic
tion is overruled; to which ruling defendants duly except
except.

57 Q. You are the same George Young who testified on the application for an order of attachment?
A. Yes, sir.
Q. Are you a member of the local union?
A. Yes, sir.
Q. What officer are you?
A. I am secretary-treasurer.
Q. At what mine?
A. At Mackie H.
Q In what county?
A. Cherokee county, state of Kansas.
Q. Were you there on the 4th, 3d and 4th of February, 1921, at that mine?
A. Yes, sir.
Q. I will ask you to look at this paper marked Exhibit "A" and state if you are able to identify it as having been seen by you before?
A. Yes, sir.
Q. Where did you see it before?
A. In this court room.
Q. Where else did you see it?
A. I saw it at Mine H.
Q. Did you bring it here?
A. Yes, sir.
Q. Where did you first see it?
A. At Local Union 498 in Scammon, Kansas.
Q. Who gave it to you, if any one?
A. Alexander Howatt.
Q. The defendant in this case?
A. Yes, sir.
Q. Where was he at that time?
A. Scammon, Kansas.
Q. And did you have any conversation with him at that time?
A. No, sir.
Q. What did he say to you?
A. He didn't say anything, only just gave me that paper.
Q. Was there any one else present?
A. Yes, sir.
Q. Who?
A. About twenty-five or thirty members.
Q. Were you having a meeting of the local union?
A. Yes, sir.
Q. In the local union meeting hall?
A. Yes, sir.
58 Q. When would that be?
A. On Friday, February 3rd.
Q. Was any action taken by your union concerning this notice?
A. No, sir, not at that time.
Q. Was there later?
A. No, sir.
Q. Well, what did you do with it?

A. I took it home that night.
Q. And what did you do with it after that time?
A. I took it to the mine Friday morning.
Q. What did you do with it there?
A. I read it before the miners at that mine.
Q. At what place in the mine?
A. At what place in the mine?
Q. Well, at the mine?
A. In the wash shanty.
Q. What time of the day was that?
A. I would judge between five minutes of seven and fifteen minutes after seven.
Q. You mean in the morning of that day?
A. Yes, sir.
Q. Then what did you do with it, if anything?
A. I stuck it in my pocket and came on home.
Q. Did you show it to any one connected with the management of the mine?
A. I don't think I did, no, sir.
Q. Know whether any one else did?
A. I don't think they did.
Q. You are acquainted with the members of the District Board are you not?
A. Yes, sir.
Q. Was any one of them present with Mr. Howatt at the time he gave this order to you?
A. Yes, sir.
Q. Which one of them?
A. Mr. Dorchey.
Q. That is August Dorchey, Vice President?
A. Yes, sir.

59 State now offers in evidence document marked Exhibit No. A2, identified by this witness, to which the defendants and each of them object for the reason it has not been shown that it was ordered by, or signed by August Dorchey or Alexander Howatt, or any one at their order, and for the further reason it has not been properly procured by the attorney for the Court of Industrial Relations prosecuting this action, but on the contrary was secured in an illegal manner, and for the further reason it is in the nature of hearsay, and for the further reason it does not tend to prove or disprove any issues in this case and has no bearing whatever upon any matter alleged in the accusation, or any matter that could be properly covered by the injunction order in this case, and for the further reason it is wholly incompetent, irrelevant and immaterial, not in any way tending to substantiate the allegations of the accusation against these defendants or any of them, and further it has not been conclusively and positively identified by this witness, which objection is by the Court overruled, and defendants excepted and except.

EXHIBIT "A."

Alexander Howat, President.

August Dorchy, Vice-President.

Thomas Harvey, Sec'y-Treasurer.

Executive Board.

mes McIlwrath,
Scammon, Kansas.
hn Fleming,
Frontenac, Kansas.
illard Titus,
Pittsburg, Kansas.
mos Standering,
Rich Hill, Mo.
hn Billings,
Osage City, Kansas.
eart Maxwell,
Pittsburg, Kansas.
Post Office Box 404.

Board Members.

Geo. L. Peck,
Int. Board Member.
John Steele,
Joint Board Member.

District Auditors.

Robert Foster,
Mulberry, Kansas.
Jas. Mariotti,
Franklin, Kansas.
Julius Laforte, Jr.,
Frontenac, Kansas.

Office Phone, Bell 191; H., 191.

Office of the President.

District No. 14.

United Mine Workers of America.

Affiliated with A. F. of L.

Pittsburg, Kansas,
February 3, 1921.

To the men employed at the mines of the Mackie Fuel Company:

This is to advise you that we are authorized and directed by our Executive Board to notify you to cease work beginning Friday morning, February 4, 1921, until such time as the Company pays Brother Karl Mismash the amount of money due him in accordance with the settlement made by the joint board of miners and operators in this case. This case has been settled by the Joint Board of Miners and Operators, but the Company refuses to comply with the settlement that has been made and refuses to pay Brother Mismash any part of the money that is due him.

We sincerely hope that the men employed at the mines of this Company will respond to the call of duty and stand united as one man until such time as this company carries out the agreement that

4
9

has been made by the Joint Board of Miners and Operators. Wh
we make a satisfactory settlement of the question in dispute yo
will be notified from this office of the same.

With kind regards, we are,

Yours very truly,

ALEXANDER HOWAT,
President District 14
AUGUST DORCHY,
Vice President

Q. Have you had any conversation with Mr. Howat since t
day he gave you this notice?

A. Yes, sir.

Q. Where was that conversation and when?

A. In the U. M. W. of A. hall in Pittsburg, Kansa

Q. On what date?

A. Monday, the 7th, I think.

Q. Was anything said there to you concerning this strike or th
proceeding?

Defendants, and each of them, object to any statement made sin
the filing of the accusation in this case, which objection is overrule
and defendants excepted and except

A. Do I understand that I could object to anything I don't wa
to answer?

62 By R. S. Brennan. Yes, sir, you have that constitution
right.

By Witness. Can I consult a lawyer before I answer?

By the Court. Yes, sir.

The question is passed by the State at this time.

Q. Were you present in the court room the day this applicati
for an attachment was presented to the Court and your testimo
was taken?

Defendants object to question for the reason it is too closely co
nected with the subject matter about which the witness stated
desired to consult counsel. Question is passed for the present.

Q. Were you present here in the court room the other day wh
your testimony was taken?

A. Yes, sir.

Q. Did you see Mr. Howat in the court room at any time th
day?

By R. S. Brennan. You may renew your request to consult
any time you want to.

A. I was present in Pittsburg that day but don't know whet
I was present when he came in or not.

Q. I wanted to ask you if you heard his statement when he ca
in the court room?

A. No, sir.

Witness excused for the present in order that he may consult counsel.

63 E. E. BOSLER, being first duly sworn, testified as follows:

Direct examination.

By F. S. Jackson:

Q. You may state your name.
A. E. E. Bosler.
Q. Where do you live?
A. Cherokee, Kansas.
Q. What is your business?
A. Coal miner.
Q. Are you a member of the United Mine Workers of America?
A. Yes, sir.
Q. An officer of a local union?
A. Yes, sir.
Q. What local union?
A. Local union 310.
Q. Were you at that mine on the 4th or 5th of February, 1921, Friday or Saturday?

At this time the defendants, and each of them, object to any testimony from this witness for the reason that his testimony just now adduced shows he is E. E. Bosler, one of the defendants in this case, a member of the United Mine Workers of America and an officer of that organization, and he is shown by the contempt order in this case to have been enjoined, together with the other defendants, and that his testimony herein adduced shows that he is in relation of privity with the defendants herein and is being called upon to give testimony against himself, and his testimony cannot be binding against the defendants herein; which objection is by the court overruled, and defendants, and each of them, duly excepted and except.

A. I was there on the 4th.
Q. What took place there that day? Did the employees work?
A. Did not.
Q. Did you have any communication with the mine superintendent or foreman?
A. I did.
64 Q. What was said between you?
A. Do I have to answer that question, Your Honor?

By the Court. Any information elicited from this witness, any case grounded upon that information the court would dismiss it.

The defendants object to the question for the reason the witness is one of the parties covered by the contempt order, out of which this ancil-ary proceeding has grown; which objection is overruled, and defendants excepted and excepts.

Defendants now move the court to strike from the record testimony of this witness taken heretofore for the reason the wi at that time, was not represented by counsel; which motion is h court overruled, to which ruling defendants at the time dul cepted and except

Q. What was the conversation between you and the mine su tendent or foreman, whichever it was?

Witness asks court for permission to consult with his attorney fore answering question, which permission is granted and the ness is excused

L. H. WINTER being first duly sworn, testified as follows:

Direct examination.

By F. S. Jackson.

Q. State your name.
A. L. H. Winter.
Q. Mr. Winter, what position do you hold in the court?
A. Reporter.
Q. Were you present when the defendants were brought in court room the other day in answer to this attachment?
A. Yes, sir.
65 Q. Did you report their statements made to the cou
A. Yes, sir.
Q. Have you since transcribed the statements made by them
A. Yes, sir.
Q. Did you hear and make a report of what Mr. Dooley an Howat said that day in the presence of the court?
A. Yes, sir.
Q. What is this? A copy of the transcript of your notes t witness document?
A. Yes, sir.

The defendants and each of them object to this testimony f reason it is incompetent, irrelevant and immaterial, the witness an officer of this court and incompetent to testify in a proceedi this nature against the defendants, which objection is overruled defendants excepted and except.

Q. You may look at this sheet which I now hand you and if it is a correct transcript made by you of the statements ma Mr. Howat that day?

Objected to for the reason it is incompetent, irrelevant an material, which objection is overruled and defendants excepte except

A. Yes, sir.
Q. Well, will you read that as what Mr. Howat said that d read it from your original notes into the record?

Defendants object to question for the reason it is vague and indefinite, and any statement made in the presence of the court is a privileged statement and is incompetent, which objection is overruled, and defendants excepted and except

Q. I will ask you to state now if this statement marked by you as Exhibit "C," page 20 of that transcript, contains a correct statement of what Mr. Howat said in the presence of Judge Curran that day?

Defendants object to question for the reason it is incompetent, irrelevant and a privileged statement, which objection is overruled, and defendants duly excepted and except.

A. Yes, sir.

Q. I will ask you to state if you furnished a copy of this transcript to Mr. Howat and his attorneys?

Objected to for the reasons last above given. Same ruling and same exceptions.

A. Yes, sir.

The State now offers in evidence and asks that same be read into the record, Exhibit "C," being page 20 of the former testimony of Alexander Howat, to which offer the defendants objects for the reason it is not the best evidence, hearsay, and for the further reason the witness Howat is here present and if they want to use him they have the right to use him now, which objection is overruled, to which ruling defendants excepted and except.

Exhibit "C."

Alexander Howat.

By Mr. Jackson:

Q. Mr. Howat, have you any statement you wish to make?

A. We called a strike down there. I suppose you will have to interpret whether that is a violation of the injunction. We called a strike.

Q. Whom do you mean by we? The district board?

A. Yes, sir, I mean a majority of the district board.

Q. And substantially in the manner as charged?

A. That letter that Mr. Young had in here today, which I think you have in your possession, is a copy or the exact letter I sent to the officers. Of course, I am not in a position to say and, of course, I will not have the authority to say whether that is a violation of Judge Curran's order or not. All I can say, we issued the order down there.

Q. That was to be carried into effect?

A. They were to cease work until such time as this company carried out the agreement that had been made by the officers of the board and the operators.

Q. Whom do you mean by we? The district board?
A. Yes, sir, the majority of the district board.
Q. Can you give us the names of those that voted?
A. All that was there except Mr. Harvey. He didn't vote.
Q. Who all was there?
A. All there except Mr. Billings and Mr. Standering, from Rich Hill, Missouri.
Q. All the members who were there except those two?
A. Yes, sir.

The defendants now move the court to strike from the record the portion of the testimony which Mr. Winter, the reporter, has
68 now read into this record for the reason it is incompetent, irrelevant and immaterial, and for the reason it purports to be the testimony of Alexander Howat, one of the defendants in this case who is now present in court and is therefore not the best evidence; and for the reason that the matters just read by Mr. Winter were at the time elicited from Mr. Howat under process of the court and he was therefore permitted to testify against himself and to incriminate himself; and for the further reason that the proceedings will directly have the effect of compelling the defendant Howat to testify against himself in this proceeding; which objection is by the court overruled, to which ruling the defendants, at the time, duly excepted and except.

The State now asks that page 19, which refers to statements made by Mr. Dorchey, — marked Exhibit "D."

Q. Is this Exhibit "D," including the part referring to Mr. Dorchey, a part of the transcript made of the proceedings of the day by you?
A. Yes, sir.

Defendants, and each of them, object to this testimony for the reason it is incompetent, irrelevant and immaterial, and for the reason that the presenting of said exhibit now in the record is attempting to introduce testimony against the defendant Dorchey, who is a defendant in this case and is now in the presence of the court, and is therefore not the best evidence if admissible under any circumstances, and further for the reason that the purported statements of Dorchey, if made, were made at a time when the defendant Dorchey was in the presence of the court and under the jurisdiction of the court and in the presence of the court and therefore incriminating against the defendant Dorchey as one of the defendants in this case. And for the further reason it was given, if given at all, under com-
69 pulsion and for the reason it was privileged and not the best evidence, which objection is by the court overruled; to which ruling defendants duly excepted and except.

Q. Were you present in court that day, and did you correctly record what was said by Mr. Dorchey?
A. Yes, sir.
Q. Did you transcribe what was said from your notes, and is this a part of that transcript, Exhibit "D"?

. Yes, sir.
Q. Did you furnish a copy thereof to the defendants and their at
neys as well as to the attorneys for the State?
A. Yes, sir.

Plaintiffs now renew their offer of Exhibit "D," being page 19 re
ing to Mr. Dorchey, including all the questions to Mr. Dorchey
his answers thereto.
Defendants renew their objection to the introduction of Exhibit
" which objection is overruled and defendants excepted and ex
t.

EXHIBIT "D."

By Mr. Jackson:

Q. Have either of you gentlemen any statement you desire to
ke?
Mr. Dorchey. I am guilty.
By the Court: Mr. Dorchey, has the accusation been read to you?
A. No, sir.
Q. Did you read the copy that was served on you?
A. No, sir.

The defendants, and each of them, object to this performance be
tween counsel representing the State and the witness, and par
ticularly that part where the counsel points out to the witness
certain parts of the typewritten pages held in witness's hand.
l object further for the reason the offer is vague and indefinite.
l attempting now to introduce something not offered in evidence,
l for the further reason it is an indirect attempt to compel the
ness Dorchey to give testimony against himself, and for the fur
r reason it does not tend to bring out anything that tends to prove
disprove any of the allegations of the accusation herein; which
ection is overruled, and defendants duly excepted and except.

Q. That was all that was said in the court room that day by Mr.
rchey?
A. I think so.
Q. Was there any attorney in the court room that day representing
se defendants?

To which defendants object, for the reason it would be a mere con
sion of the witness; which objection is by the court overruled, and
fendants duly excepted and except.

A. Well, I don't know.
Q. What attorneys were present?

Same objection, and for the further reason it is incompetent and
material; which objection is overruled, and defendants excepted
l except.

A. Mr. Hopkins, Mr. Jackson and Mr. Jim Callery is all that I
member.

Q. Is Mr. Jim Callery a member of the firm to which Mr. Ph
Callery belongs here in Pittsburg, do you know?

Defendants object, for the reason it is incompetent, irrelevan
and immaterial and calls for a conclusion of witness; whic
71 objection is overruled, and defendants excepted and excep

A. I don't know for sure.
Q. Did Mr. Callery take any part, Mr. Jim Callery, as you cal
him, take any part in the proceedings that day?

Same objection. Same ruling and same exceptions.

A. Yes, sir.
Q. Does your transcript show what he said and did?

Same objection. Same ruling and same exceptions.

A. Yes, sir.
Q. And was present at the time these statements you have re
were made?

Same objection. Same ruling and same exceptions.

A. Yes, sir.
Q. Did Mr. Jim Callery appear and cross-examine witnesses w
were examined that day in court on the examination on the appl
tion for an attachment against these defendants?

Same objection. Same ruling and same exceptions.

A. Yes, sir.
Q. Did Mr. Callery state for whom he appeared?

Objected to unless witness shows that he knows. Objection o
ruled and defendants excepted and except.

A. I don't remember that.
Q. This transcript that you have written off or transcribed cont
what was said concerning any orders that were made in
72 case that day as to continuance?

Objected to. No ruling and no answer.

Q. What I mean is, it shows all the notes you made that day
does it contain just a part?

To which defendants object, for the reason it is not the best
dence and calls for a conclusion of the witness in view of the
the transcript is procurable by counsel for the prosecution herein
if admissable at all such transcript should be produced and ident
and further this is an attempt upon the part of the prosecutio
compel these defendants to give testimony against themselves
for the further reason it violates the privilege between counsel
Callery and his client if he were the counsel for any of the
fendants at that time; which objection is overruled, and defen
excepted and except.

A. I don't remember whether I have got it all in there or not.
Q. I will ask you to state whether Mr. Callery moved that day or asked the court for a continuance of the proceedings until other counsel, including his brother, Mr. Phil Callery, could arrive?

Defendants object to witness relating any of the alleged statements of James Callery at that time unless all of his statements be given; which objection is overruled, and defendants excepted and except.

A. Yes, sir.

Defendants object, for the further reason that the question shows that James Callery was appearing representing an absent counsel; which objection is overruled, and defendants excepted and except.

Cross-examination.

By R. S. Brennan.

Q. Did not Mr. James Callery at that time state that he was not the counsel; that his brother, Phil Callery, was, and did he not ask that the case be delayed or continued until his brother, Phil Callery, could arrive?
A. He asked that the case be continued until his brother Phil got here, but I don't remember as to the other part of the question.
Q. Did he not say that his brother was the counsel for these defendants?
A. Yes, sir, he said that.
Q. Did he not say that he, personally, James Callery, had not consulted the defendants and did not appear to conduct the hearing?
A. I don't remember that.
Q. Did he state that he had consulted with these defendants?
A. He did not, that I remember of.
Q. Did he file any pleadings on motions on the part of these defendants?
A. I don't know.
Q. Is it not a fact, Mr. Winter, that upon the statement of James Callery that he did not represent the men and that his brother Phil, who did represent the men, was en route to Pittsburg and would arrive about 2 o'clock?
A. He made a statement to that effect and a recess was taken.

Redirect examination.

By F. S. Jackson.

Q. To what effect?
A. That his brother was on the way from Kansas City and would arrive about 2 o'clock.
Q. Refreshing your recollection now, was it not true that the statement referred to by counsel was to the effect that Mr. Phil Callery was

the chief or principal counsel and that the defendants were not ready to proceed to trial without his presence?

74 A. I don't remember what all was said. There was something to that effect said at this time and I can't state exactly what.

The defendants and each of them, at this time moved to strike Exhibits "C" and "D" from the record, for the reason that the testimony of this witness has shown that the said Dorchey and Howat were present in the court room under process of court and without counsel and appearing here as defendants in said cause and under compulsion, to give testimony, that they gave testimony in violation of their constitutional rights under the constitution of the State of Kansas and the constitution of the United States, and the testimony clearly shows that they were here in court without the advice or the presence of their counsel, Mr. Phil Callery, which objection and motion is by the court overruled, and defendants duly excepted and except.

E. E. Boswell recalled for further direct examination.

By F. S. Jackson:

Q. What was the conversation between you and the nine by man or superintendent which ever it was?

Defendants object to question for the reason it is incompetent, irrelevant and immaterial, which objection is overruled and defendants excepted and except.

A. Well, I handed him the strike order.
Q. I didn't quite hear you?
A. That is on the 4th?
Q. Yes, sir?
A. I went to the shaft with the president of our local union.
Q. And did you state a moment ago what you said to him? I didn't quite understand you, is all. What did you do there or say to him?
A. I didn't do anything.
Q. Someone else did in your presence?

A. Yes, sir.

75 Q. Who was it?

A. The president of our local union.

Q. What is his name?
A. C. Lampton.

At this time the defendants ask that the record show that Judge Huggens, the presiding judge of the Industrial Court, is present in court and consulting with the attorneys for the prosecution in this case.

By F. S. Jackson: There is no objection, and the record may show that all three of the judges are present, and the Attorney Gen-

County Attorney of this county and Judge Curran is present the clerk and the sheriff and a witness on the stand.

Now, what did you do there that day? That is what we want t.

efendants object to question, for the reason the witness is one e defendants in this case, and the question, if answered, would to incriminate him; which objection is overruled, and de- ants excepted and except.

Well, I would have to answer it this way: I didn't do any- g.

Now, you said there was someone else present?

Yes, sir; the president of our local union went with us.

What was his name?

Cicero Lampton.

What did Cicero Lampton do there in your presence?

Handed the mine foreman the strike order.

That is the strike order which has been marked Exhibit "B" his case. Can you tell, Mr. Witness, which one of those notices s (hands witness two documents)?

I don't know as I could. I didn't put no mark on it.

You don't know whether it was the one in blue or the lighter r?

A. I wouldn't be positive about that.

Q. But it was one just like this (hands witness Exhibit "B")?

Yes, sir.

Was there anything said there that day in your presence?

Yes, sir.

What was it, if you remember?

Do I have to answer that, Judge?

By F. S. Jackson

Who said it?

Our president.

You may now state what he said.

Do I have to answer that, Judge?

e the Court: Answer the question.

he defendants object, for the reasons given in former objection, rruled and defendants excepted and except.

. Well, he said it was a strike order, and we talked about a strike e.

efendants object to answer of witness and move the court to e same from record, for the reason it is hearsay and not binding these defendants; which objection is overruled, and defendants pt.

By R. S. Brennan

Q. Is the president in the court room?
A. He is not.
Q. What was said?
A. Well, now, I wouldn't be positive. One of us stated to the mine foreman that there would be no more work that week.
Q. What week was that?
A. That was the first week in February.
Q. And was this on the 3d or 4th?
A. On the morning of the 4th.
Q. Was anything else said about the work?
A. Yes, sir.
Q. Who said that?
A. Well, I believe myself.
Q. What did you say?
A. I told him there would be no more work and if the case was settled by Sunday we wanted to clean up.
Q. That would be Sunday, the 6th?
A. Yes, sir.
Q. What did the mine foreman say? It was the mine foreman to whom you were talking as I understand it. What did he say?
A. I don't know as he said anything. I believe he stated—wouldn't say positive whether he did or not—he was without instructions and he couldn't give us no answer? I believe he said that—I wouldn't be positive about it.
Q. Did you clean up?
A. Not that day, no, sir.
Q. When did you, if at all?
A. On the 9th.
Q. Did you work any before that time, between the time of this conversation and the 9th?
A. We did not.
Q. What was the reason that you cleaned up on the 9th?
A. Had orders to.
Q. From whom?
A. Board members.
Q. You mean the District Board?
A. Yes, sir.
Q. Were those orders written or oral?
A. No, sir.
Q. Where did you first hear of them, first hear of these orders?
A. In Cherokee, Kansas.
Q. Who gave them to you?
A. James Mackelraith.
Q. Is he a member of the District Board?
A. Yes, sir.
Q. What did he say?
A. He handed me the strike order.
Q. I am referring now to your order to clean up on the 9th.

A. Oh, he told us if the case wasn't settled 'till Sunday evening clean up on Monday and Tuesday.
Q. Did he tell you that on the day he handed you the strike der?
A. Yes, sir.
Q. And you carried those orders out, you and your president?
A. No, sir.
Q. Who did?
A. I wouldn't say as anybody carried the orders out.
Q. Were you to clean up on the 9th?
A. Yes, sir.
Q. Who gave those orders to the men so that it came about that ey did clean up on the 9th?
A. I read the orders to the men
Q. You read the orders to the men?
A. Yes, sir.
Q. Who told them about this order to clean up on the 9th? How d they get that information?
A. By word of mouth.
Q. Who gave it to them?
A. I did.
Q. In the meeting?
A. Yes, sir.
Q. Where was that held?
A. Cherokee, Kansas.
Q. In the union hall?
A. Yes, sir.
Q. On what date?
A. The 4th day of February, 1921.
Q. And that was a part of the strike order, was it?
A. Yes, sir.

Cross-examination.

By Phil H. Callery.

Q. Your name is E. E. Boswell?
A. Yes, sir.
Q. Are you an official of the local union, 310?
A. Yes, sir.
Q. You are one of the defendants that has been cited into this urt and are now being tried for contempt of the court, are you not?
A. Yes, sir.

The defendants, and particularly the defendant E. E. Boswell, ve the court to strike from the record all the testimony of the wit- ss Boswell, for the reason that the record shows that said Boswell ne of the defendants in this case, and is now under process of court being forced to testify against himself and incriminating himself and is thereby being denied his constitutional rights, and further his testimony is incompetent, irrelevant and im-

material, which objection is overruled, and defendants, and each of them, excepted and except

GEORGE YOUNG, recalled for further direct examination

By F. S. Jackson:

Q. Mr. Young, you were being interrogated concerning a conversation that you had with Mr. Howat on Monday following the 4th of February, 1921, when you left the witness stand. Are you now ready to answer that question?

A. No, sir.

Q. You decline to answer it?

A. Yes, sir.

Q. On what ground?

A. Because I don't think it is anything to do with this court.

By the Court:

Q. Is that the only reason you have got?

A. No, sir.

At this time R. S. Brennan, one of the counsel for defendants, advises the witness that he has the constitutional right to refuse to answer anything in regard to the secret works of the organization and the strike order.

Q. You mean that it was nothing concerning this strike that we talked about there that day?

A. Part of it was; yes, sir.

Q. Well, we are not asking for any of the secret work of the order, pass words or anything of that sort, but you may state what Mr. Howat said to you concerning the conduct of this strike as to how long it would last and its purpose.

Defendants object, for the reason the question, if answered, would be violative of this witness's constitutional rights as tending to incriminate him; which objection is overruled, and defendants excepted and except. 80

A. I don't want to answer the question.

By the Court: You may answer. You must answer.

A. In regards to this strike I went up into the office and he informed me to inform the superintendent, mine foreman, at Mackie No. 11 that our local would pay two drivers and a gas man to run the mine in order that the men may get a day to clean up. I issued those orders.

Q. That was in order to clean the mine up?

A. I would judge it would be; yes, sir.

Q. That was before the mine was cleaned up?

A. Yes, sir.

Q. The mine was cleaned up on the 9th?

A. No, sir; cleaned up on the 10th.

Q. Was that in accordance with this order?
A. No, sir.
Q. Didn't the company accept the proposition?
A. I don't think they did.
Q. They didn't permit the clean up until the 10th?
A. No, sir.
Q. On the 10th they did?
A. They blowed the whistle on the 9th. They blowed the whistle ile I was in court here, but I didn't have an opportunity to notify em.
Q. But you did clean up on the 10th?
A. Yes, sir.
Q. Has there been any work in the mines since?
A. I couldn't tell you.

Cross-examination

By Phil H. Callery:

Q. Your name is George Young?
A. Yes, sir.
Q. You are one of the defendants in this action brought for con- pt of the orders of this court?
A. Yes, sir.
Q. You were brought in here on the 7th of February, last Monday a week ago, were you not?
A. Yes, sir.
Q. How did you happen to come here, Mr. Young, at that time?
A. By subpoena from the under-sheriff of Crawford county, John ight.
Q. And did you respond in answer to the papers served on you those officers?
A. You bet I did.
Q. Did you come voluntarily or did you come because you be- ed you had to come?
A. I thought I had to come, that is a cinch.
Q. When you came to the court here, state whether or not you this witness stand, Mr. Young, on the 7th of February, 1921?
A. Yes, sir.
Q. And did you testify on that day here, Mr. Young?
A. Yes, sir.
Q. Did you testify voluntarily or did you testify because you felt ught to under the orders of the court, the process of this court?

The State objects to question, for the reason it is incompetent, evant and immaterial; which objection is overruled, and defend- excepted and except.

Q. State whether or not you testified voluntarily when you came e?
A. No, sir.

The State objects to the question, for the reasons last above given, and moves the court to strike from the record the answer of witness, which objection and motion are by the court sustained, and defendants, and each of them, duly excepted and except.

Q. Had you consulted your counsel before you came here to testify?

A. I had not.

The State objects to question, for the reasons last above given, and moves the court to strike the answer of witness from the record, which objection and motion are by the court sustained and the defendants excepted and except.

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Q. Mr. Young, I hand you a paper here marked Exhibit "A" purporting to be a strike order, issued over the signatures of Alexander Howat and August Dorchey, and I will ask you if on the 7th day of February, 1921, either that paper or the paper which I now hand you, purporting to be a copy of the same and marked Exhibit "B," whether or not one of those papers was on the 7th day of February, 1921, in your possession here in the court room?

A. Yes, sir.

Q. And I will ask you whether or not you surrendered one or the other of those papers, copies, into the possession of the court here?

A. Yes, sir.

Q. Did you do that voluntarily or did you do it because you felt you had to do it under the process of the court?

The State objects, for the reason it is calling for the mental process of the witness and a conclusion, which objection is sustained, and defendants excepted and except.

Q. Did you understand at the time you testified here, Mr. Young, in this previous hearing that it was your constitutional right to refuse to give testimony here that would incriminate you?

State objects to question, for the reason it is incompetent, irrelevant and immaterial and calling for the conclusion of the witness, which objection is sustained, and defendants excepted and except.

Defendants at this time offer to show by this witness that at the time he was brought into court here on the 7th day of February, 1921, at the time the purported testimony which has been introduced here from the transcript was given, was at said time brought into this court under orders of the court and without being given an opportunity to consult counsel as to his constitutional rights, and after being conducted to the court room here by the sheriff was placed upon the stand and forced to give his testimony, which has been copied here in the transcript, in violation of his constitutional rights, and that said testimony was of such a nature as would incriminate him and was not given voluntarily; which offer to prove is by the court refused and denied, and the defendants excepted and except.

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The State moves the court to strike from the record the offer to prove as not a statement of fact and not a proper way to offer test-

ny in the court, and for the further reason the records show how witness was subpoenaed, how he was sworn and how he testified, l any statement on the part of the counsel is not the best evi- ce, if true, and the record further shows it is not true; which tion to strike is sustained; to which ruling of court counsel for fendants excepted and except.

E. E. BOSLER, recalled for further cross-examination.

By Phil H. Callery:

Q. Your name is E. E. Bosler?
A. Yes, sir.
Q. You are the same E. E. Bosler who was on the stand here a moments ago?
A. Yes, sir.
Q. What official position, if any, Mr. Bosler, do you occupy in organization of the United Mine Workers of America, District
A. Recording Secretary, Local 310, U. M. W. A.
Q. I will ask you if on the 7th day of February, 1921, you were ered to appear in this court?
A. Yes, sir.
Q. Did you come to this court on February 7th, 1921?
A. Yes, sir.
Q. And did you give testimony here in this court on that day?
A. I did.
Q. Did you previous to being called to the witness stand consult advise with your counsel as to your constitutional rights in this ter?

To which the State objects, for the reason it is incompetent, irrele- t and immaterial; which objection is sustained, and defendant- epted and except.

Q. I hand you here a paper marked Exhibit "A," Mr. Bosler, ed by what purports to be the signatures of Alexander Howat August Dorchey, purporting to be a strike order issued to you, I also hand you paper marked Exhibit "B," purporting to be a y of the same paper, Exhibit "A," and I ask you if either one the other of those papers were in your possession on the 7th day February, 1921?
A. Yes, sir.
Q. I will ask you what you did with either Exhibit "A" or Ex- "B" on that date here in this court?
A. Turned them over to the court.
Q. Did you turn those papers purporting to be a strike order over the court because you felt that you were under obligation to do y process of the court, or did you do it voluntarily?

To which the State objects, for the reason it is immaterial and not cross-examination; which objection is sustained, and defendants excepted and except

Q. How did you come to turn them over, then, Mr. Bosler?

Same objection as last above made. Sustained. Same exceptions.

85 The defendants at this time offer to show, and particularly the defendant Bosler, that at the time the defendant Bosler was brought into this court on the 7th day of February, 1921, that he turned over to this court either Exhibit "A" or Exhibit "B," purporting to be this strike order, not voluntarily but under the process of the court, feeling he was obligated to do so, and that at the time the said E. E. Bosler testified in this court on the 7th day of February, 1921, that he did so not voluntarily but under the process of the court and was compelled to testify by the process of the court and that he did not and had not at the time of giving such testimony been advised by counsel as to his constitutional rights and did not know at the said time it was his constitutional right to refuse to testify upon the ground that said testimony would incriminate him, if he so believed it would so incriminate him.

To which offer the State objects, for the reason it is incompetent, irrelevant and immaterial, and the testimony so offered would be incompetent, irrelevant and immaterial and not the best evidence, and for the further reason that the record shows in this case all of the matters concerning which the counsel has made the offer, and such testimony is not proper cross-examination, and moves the court to strike the offer from the record for the reasons stated; which objection is sustained, and defendants excepted and except.

The motion to strike said offer from the record is by the court overruled.

Q. Mr. Bosler, state what part of the time since the 1st of January, this year, if you know, that mine A was closed down?

86 State objects to question, for the reason it is not cross-examination. Objection sustained, and defendants excepted and except.

Redirect examination.

By F. S. Jackson.

Q. Counsel asked you concerning your testimony in this case on the 7th day of February, 1921. I will ask you to state who cross-examined you, if anyone, on that day.

Defendants object to the question, for the reason it is incompetent, irrelevant and immaterial, and further, the witness has stated that he knows, if anybody did cross-examine him, who it was and not the best evidence; which objection is overruled, and defendants excepted and except.

Q. What lawyer or attorney cross-examined you that day?

Same objection and same ruling. Same exceptions.

A. Well, I don't know his name.
Q. Are you acquainted with Mr. James Callery, brother of Phil Callery?
A. No, sir.
Q. You don't know Mr. Callery?
A. No, sir.

At this time the court takes a recess until 1 o'clock p. m., February 15th, 1921.

Afternoon Session, February 15th, 1921

Present as before.

57 CLYDE NEIBARGER, being first duly sworn, testified as follows:

Direct examination

By R. J. Hopkins

Q. Your name, please, sir?
A. Clyde Neibarger.
Q. Where do you live?
A. Pittsburg.
Q. What is your business?
A. Reporter.
Q. For what?
A. The Sun, Pittsburg Sun.
Q. How long have you been reporter for the Sun?
A. Two years.
Q. Are you acquainted with the defendants in this case, Alexander Howat and August Dorchey?
A. Yes, sir.
Q. Did you have any conversation with any of those gentlemen within the past ten days or two weeks with reference to a strike called?
A. Yes, sir.
Q. With whom did you have that conversation?
A. Mr. Maxwell and Mr. Howat.
Q. Where was the conversation?
A. At the United Mine Workers' office.
Q. In what place—Pittsburg, Kansas?
A. Yes, sir, Pittsburg.
Q. Did you say when it was held, this conversation?
A. Saturday, February 5th, 1921.
Q. What was said by Mr. Howat and Mr. Maxwell?

The defendants object to question, for the reason it is not binding upon the other defendants not present; which objection is overruled, and defendants excepted and except.

A. I first spoke to Mr. Maxwell. Well, I asked him in reg
to the strike and he told me some of the circumstances ab
88 how it had come up, and I asked him if the District Bo
had called the strike and he said they had, and he said
didn't care who knew it.

At this time the defendants, and each of them, move the cou
strike from the record the answer of the witness, for the reaso
covers occurrences subsequent to the filing of the action herein
does not prove or tend to prove any of the issues in this case an
not binding upon any of the defendants; which objection and mo
is by the court overruled, and defendants excepted and except.

Q. What did Mr. Howat state in this conversation?
A. I went in to see Mr. Howat then and he said he had ord
the strike upon receipt of orders from the District Board, an
also related some of the circumstances leading up to it and wh
was about, etc.
Q. That was also on the 5th day of February?
A. Yes, sir.

Defendants, and each of them, now move the court to strik
the testimony of this witness from the record, for the reason
incompetent, irrelevant and immaterial, is not evidence against
of the defendants in the case, does not prove or tend to prov
allegations of the accusation filed herein, and nothing the wi
has related tends to substantiate the charges against the defend
which objection is by the court overruled, and defendants
excepted and except.

EDNA M. BURNS, being first duly sworn, testified as follows

Direct examination

By F. S. Jackson

Q. Your name, please?
A. Edna M. Burns.
Q. You live in Pittsburg?
A. Yes, sir.
89 Q. What is your business?
A. Clerk of the District Court of Crawford County, K
Q. How long have been clerk?
A. Since January 13th, 1919.
Q. Acting in your official capacity, were you in the District
room on Tuesday, the 8th — no, on Monday, the 7th of Feb
1921?
A. Yes, sir.
Q. On that occasion did you observe present in the cour
Mr. Alexander Howat, defendant in this case, and August D
a defendant in this case?
A. Yes, sir.
Q. Are you acquainted with those gentlemen just named?

A. Yes, sir.
Q. I will ask you also whether or not you are acquainted with Mr. James Callery, an attorney of this city?
A. Yes, sir.
Q. Did you see him on that day?
A. Yes, sir.
Q. And where did you see him that day, Mrs. Burns?
A. Sitting on the west side of the attorneys' table here in the court room.
Q. Is he an attorney or a member of the bar of Crawford county?

To which the defendants object, for the reason it is incompetent, irrelevant and immaterial; which objection is overruled, and defendants excepted and except.

A. Yes, sir.
Q. Do you know whether or not he is associated or affiliated with any other lawyer practicing at this bar?

Same objection as last above made. Same ruling and same exceptions.

A. Yes, sir.
Q. With what attorney is he associated?

Same objection. Same ruling and same exceptions.

A. Mr. Phil Callery, the firm of Callery & Callery.
Q. His office is in Pittsburg, Kansas?
A. Yes, sir.
Q. In what case was Mr. James Callery appearing in court on February 7th, 1921?

To which defendants, and each of them, object, for the reason it calls for the opinion and conclusion of the witness; which objection is overruled, and defendants except.

A. In Case No. 6166, State of Kansas v. Alexander Howat et al.
Q. Is that this case?
A. Yes, sir.
Q. Did you hear any statements made by Mr. James Callery in the trial of that matter before Judge Curran on the 7th day of February, 1921?

Same objection. Same ruling and same exceptions.

A. Yes, sir.
Q. You may state whatever you can remember that Mr. Callery said on that occasion.

To which defendants object, for the reason it is incompetent, irrelevant and immaterial and not the best evidence; which objection is overruled, and defendants excepted and except.

A. I can state in substance, probably not the exact words. He came to the floor at different times, two or three different times, and made different remarks, asking for continuance for the reason that

the chief counsel for the defendants was not present, and I remember the court inquiring of him as to whether or not he was appearing for the defendants, and he stated that he was appearing on behalf of the defendants.

91 Q. Can you state whether or not he cross-examined witnesses that were offered by the State?

Same objection as last above made. Same ruling and same exceptions.

A. Yes, sir; he did.

Q. State whether or not the defendants, or any of them, were present at that time?

Same objection. Same ruling and same exceptions.

A. Yes, sir; they were.

Q. Was Mr. Howat present in the court room?

A. Yes, sir.

Q. Was Mr. Dorchey present?

A. Yes, sir.

Q. Did they or either of them or any of the defendants offer an objection to James Callery representing them here that time?

Same objection. Same ruling and same exceptions.

A. They did not.

Q. Do you recall about the attendance of Mr. Young as a witness on that occasion?

Objected to, for the reason it is incompetent, irrelevant and immaterial and not the best evidence; which objection is overruled, and defendants excepted and except

A. Yes, sir.

Q. And do you recall the attendance upon that court of a witness by the name of Bosler?

Same objection as last above made. Same ruling and same exceptions.

92 A. Yes, sir.

Q. Did you hear them testify?

Same objection. Same ruling and same exceptions.

A. I did.

Q. Did they upon that occasion object to Mr. Callery representing them? Representing the defendants?

Same objection. Same ruling and same exceptions.

A. They did not.

Q. Did you hear them make any objection to testifying in case at that time?

Same objection. Same ruling and same exceptions.

A. Did not.
Q. You were present so you could have heard every objection if they had made any?

Same objection. Same ruling and same exceptions.

A. Yes, sir.
Q. Did you hear Mr. Howat make any statement to the court on that occasion?

Defendants, and each of them, object, for the reason it is incompetent, irrelevant and immaterial and not the best evidence; which objection is overruled, and defendants excepted and except.

A. Yes, sir.
Q. State as nearly as you can remember what he said.

Same objection. Same ruling and same exceptions.

A. He stated that he had called a strike by the order of a majority of the District Board and that it would be as to the discretion of the court whether or not he had violated the injunction that was given by the court.

Defendants, and each of them, object to answer of witness and ask the court to strike same from record, for the reason it is incompetent, irrelevant and immaterial and not the best evidence; which objection and motion is by court overruled, to which ruling defendants excepted and except.

Q. Did you hear Mr. Dorchey make any statement on that occasion?

Same objection. Same ruling and same exceptions.

A. Yes, sir.
Q. You may state what he said in substance.
A. Well, there was one statement that he made, that he was guilty, then there was another statement in answer to questions by the court as to whether or not he had read certain pleadings in the case and he said that he had not.

Cross-examination.

By Phil H. Callery

Q. You say he stated he had not read the accusation that had been filed against him?
A. Yes, sir.
Q. Did you hear any of the other defendants say they had read the accusation filed against them at that time?
A. I think probably none of the other defendants had been asked if they had read it. I think he was the only one that was asked directly if he had read it and the court decided that it be read.

Q. You said that you knew J. E. Callery to be an attorney associated with myself in the practice of law. You do not
94 know what branch of the practice it is his work to handle, do you?

A. Judging from the different branches he does handle I would say he was connected with you in all phases of the practice, judging from the part that he takes.

Q. That is, it is only your opinion so far as the pleadings are concerned? You have no reason to form a conclusion that he is associated with me in representing the miners in these cases that come up involving the violation of the Industrial Court law?

A. Only as to my actual knowledge, as I said before.

Q. What is your actual knowledge?

A. Signatures on papers that he brings down.

Q. What papers do you know he ever signed in connection with this case?

A. Just your firm name, Callery & Callery.

Q. What papers has he signed in connection with this case?

A. Just right now I couldn't recall.

Q. Can you examine your files and find any case that he signed any papers that he signed, in connection with this case?

A. Well, that I don't know.

Q. Well, as a matter of fact he never has signed any paper in connection with this case?

A. I think you have your firm name, Callery & Callery.

Q. Well, I will ask you to examine your files and find any case any paper, that he has signed in connection with this case, and state what it is that you base your conclusions on that J. E. Callery is attorney for these defendants.

State objects to question, for the reason witness has made no such statement.

Q. All right, then, any place where they have been signed Callery & Callery or signed by him individually?

A. These are all papers signed by the plaintiff.

95 By F. S. Jackson:

Q. Have you the subpoenas there and the bonds that were filed by the defendants, Mrs. Burns?

A. Not the bonds, Mr. Jackson.

Q. The precipe for subpoena issued to Cherokee county?

A. It doesn't seem to be here.

Q. Is the subpoena duces tecum issued in Cherokee county, or are there any precipes there issued by the defendants?

A. Not by the defendants. I don't find any.

Q. Now, Mrs. Burns, you know it to be a fact, do you not, that the firm of Callery & Callery handle a large number of compensation cases in your court?

A. Yes, sir.

Q. And you have seen Mr. James E. Callery handle a good many
ters in connection with the compensation law?
A. Yes, sir.
Q. Now in testifying as to the statements that were made Mrs.
rns, in regard to the statements of J. E. Callery, do you not know
o be a fact that at the time he was in court here that he appeared
cially and for the purpose only of asking for a continuance for the
fendants in this case until I could arrive myself?
A. No, sir, I do not.
Q. You heard him make a statement did you not, asking for a
ntinuance until I did arrive?
A. Yes, sir, until the chief counsel
Q. That he didn't want to represent these people?
A. No, sir, he didn't so state.
Q. Did you hear all of the proceedings of the trial?
A. Yes, sir.
Q. Did you take any shorthand notes of the proceedings?
A. No, sir.
Q. You are just speaking from memory?
A. I have probably some notes in longhand. I usually jot
n different items. I don't take anything as a whole.
Q. You are just testifying from recollection?
A. Testifying to what I heard.
Q. Well, I say you are testifying from your memory now? You
n't any notes?
A. No, sir, no written notes.
Q. Well, you haven't any notes have you?
A. I have my general knowledge as to what took place at that
e.
Q. You wouldn't say there wasn't some things transpired that
did not hear and do not recollect do you Mrs. Burns?
A. I heard everything that went to the court.
Q. I say, you wouldn't say there wasn't some things transpired that
did not hear and do not now recollect?
A. Yes, sir, I heard everything that was in the presence of the
rt.
Q. Do you now recollect everything that transpired in the presence
the court on this date, the 7th of February, 1921?
A. Not everything in detail, no.
Q. Mrs. Burns, will you please state now whether you have ex-
ned all the files in this case regarding the violation of the in-
tion?
A. No sir, I haven't.
Q. What is it you haven't examined?
A. I would have to see all the papers with reference to that. This
ena here shows to the sheriff of Crawford County, but I pre-
e that is the one wherein the subpoena was issued to Cherokee
nty.
Q. Are there any other of the files Mrs. Burns, that you would like
examine before saying positively that Mr. J. E. Callery was one
the attorneys in this case?

97 A. Well, not to blame any special one. I would want to examine the entire record. None of these papers carry Mr. Callery's name, Mr. J. E. Callery.

Q. Are there any of the other files Mrs. Burns, that you haven't examined that you would like to examine?

A. Not unless there is some more precipes.

Q. Your statement that Mr. J. E. Callery was one of the attorneys in this case was based upon opinion and upon hearsay and not upon any of the papers filed in this case?

A. Based mostly on his appearance on Tuesday and his answer to the court.

Q. And not upon any of the pleadings that have been signed by him?

A. Not of those that I have examined.

The defendants now ask that the testimony of this witness upon the question of whether or not J. E. Callery was counsel in this case be stricken from the record for the reason the testimony shows it is based upon mere opinion and hearsay, which motion is by the court denied, to which ruling defendants, and each of them, excepted and except.

Redirect examination.

By R. J. Hopkins.

Q. The matters about which you were asked on your direct examination you based only on the proceedings which were had in this court on the 7th day of February, or Monday, and I ask you now whether or not you were present in this court and heard the proceedings in this contempt case on Tuesday, February 8th?

Defendants object to question for the reason the first part of question is a gratuitous statement by counsel, and the second part calling for hearsay and opinion of this witness, which objection is overruled, and defendants excepted and except.

98 A. I don't understand the question.

Question is withdrawn.

Q. Mrs. Burns, did the defendants, and each of them, execute bond on February 7th, for their appearance in this court?

A. Yes, sir.

Q. And for their appearance when, on the 8th?

A. Yes, sir, at 1:30.

Q. Mrs. Burns, what attorney, if anyone, appeared with the defendants in the preparation of their bonds that were executed in your office.

Defendants object to question for the reason it is not the best evidence, which objection is overruled, and defendants excepted and except.

A. Mr. James Callery.

Q. On whose application, on the application of what attorney was the case continued on the 7th day of February?

Defendants object to question for the reason it is incompetent, irrelevant and immaterial and not the best evidence, which objection is overruled, and defendants excepted

A. On the application of James Callery.
Q. Were you present in court at 1:30, on the 8th day of February, when this matter was called?

Same objection. Same ruling and same exceptions.

A. Yes, sir.
Q. Were the defendants present in court?

Same objection. Same exceptions and same ruling.

A. Yes, sir.

99 Q. Who, if any attorney, appeared representing them at 1:30 on that day?

Same objection. Same ruling and same exceptions.

A. Mr. James Callery.
Q. Was an application made by the defendants through their attorney appearing for them at 1:30 for a further continuance?

Same objection. Same ruling and same exceptions.

A. Yes sir.
Q. And was the case continued to a later date?
A. Yes, sir.
Q. On the application of James Callery the attorney?
A. Yes, sir, it was.
Q. Mrs. Burns, please examine plaintiff's exhibit "E" with all of the appendages and state what it is?

Defendants, and each of them, object for the reason witness has not testified that she knows and for the further reason it is not proper re-direct examination, which objection is overruled and defendants excepted and except.

A. This is in the case of the State of Kansas, et al. v. Alexander Howat, et al., amended and supplemental petition, application and a supplemental petition.
Q. Please continue and state what the appendages are?

Defendants object for the reason witness hasn't stated that she knows and they haven't been properly identified, which objection is overruled, and defendants excepted and except.

A. Including the revised constitution of the U. M. W. of A. and the contract for shaft mines and strip mines, District 14,

100 between the U. M. W. of A., S. I. C. O. A., and contract for shaft mines and strip mines District 14, between U. M. W. of A., and S. I. C. O. A.

Q. Were those contracts attached as exhibits to the amended and supplemental petition of the state?

Defendants object to question for the reason it is immaterial, incompetent and irrelevant, not the best evidence and for the further reason the exhibits are a part of the files and speak for themselves and not proper re-direct examination which objection is overruled and defendants excepted and except.

A. Yes, sir.
Q. And these are a part of the files of your office?
A. Yes, sir.

The state now offers in evidence the revised constitution which is attached to plaintiff's exhibit "E" and marked in connection with Exhibit "E" as Exhibit "A," and also offers in evidence the contract for shaft mines and strip mines of District 14, between the U. M. W. of A., and the S. I. C. O. A., which is marked Exhibit "C" as being attached to plaintiff's Exhibit "E." To which offer defendants object for the reason it is incompetent, irrelevant and immaterial, not having been properly identified by this witness and not being binding upon the defendants herein, and for the further reason the exhibits, and each of them, do not tend to prove or disprove any of the issues in this case, and is improper re-direct examination of this witness, which objection is overruled, and defendants, and each of them, duly excepted and except.

101 Q. Mrs. Burns, please examine plaintiff's Exhibit "F" and state what it is?

A. This is a journal entry for a permanent injunction filed September 30th, 1920.

Q. What case?

A. Case 6166. State of Kansas, et al. v. Alexander Howat, et al.

Plaintiff now offers in evidence all of the pleadings leading up to this Journal Entry of Judgment marked Exhibit "F," in case 6166, being the case of the State, et al. v. Alexander Howat, et al. To which offer the defendants object for the reasons heretofore given in the objection last above made, and for the further reason it is frivolous as the files offered are already part of the records of this court and are always before the court, which objection is overruled, and defendants duly excepted and except.

Plaintiff now offers in evidence Plaintiff's Exhibit "F" which is the journal entry of permanent injunction in case 6166, being The State of Kansas, et al., v. Alexander Howat, et al., filed September 30th, 1920, to which offer the defendants object for the reasons last above given, which objection is overruled, and defendants excepted and except.

Plaintiff now offers in evidence plaintiff's Exhibit "E" which is the amended and supplemental petition filed in case 6166, being The State of Kansas, ex rel., v. Alexander Howat, et al. To which offer defendants object for the reasons last above stated. Objection overruled and defendants excepted and except.

Plaintiff now offers in evidence Exhibit "H" and Exhibit "G," Exhibit "G" being the answer filed by the defendants in case number 6166, being the State of Kansas ex rel. v. Alexander Howat, et al., filed April 17th, 1920.

102 To which offer defendants object for the reasons last above stated. Objection overruled, and defendants excepted and except.

Exhibit "H" above offered being temporary injunction in case 6166, filed April 20th, 1920, in case of State of Kansas ex rel. v. Alexander Howat et al. Same objection as last above stated. Same ruling and same exceptions.

Cross-examination.

By Phil H. Callery

Q. Mrs. Burns, I call your attention to Exhibit "1-*a*" which reads, "contract for shaft mines and strip mines, District No. 14, between U. M. W. of A. and S. I. C. O. A." Now, you said you knew what that is. You are not a party to this contract?

A. No, sir.

Q. All you know in regard to Exhibit "1-*a*" or Exhibit "A" or Exhibit "C" purporting to be contracts between District 14, United Mine Workers of America and Southwestern Coal Operators Association, and the constitution of the United Mine Workers of America, District 14, all you know as to what those are is what you read upon the covers of them?

A. I was enquired about Exhibit "E" as a whole.

Q. You stated you knew what those were?

A. I was asked and I identified Exhibit "E" as a whole. I stated what it included.

Q. You just testified, just read what the writing was on those exhibits?

A. I just stated what Exhibit "E" was and contained, yes, sir.

The plaintiff rests.

At a close of the plaintiff's testimony and after the plaintiff has rested its case, the defendants demur to the evidence in this case for the reasons that the evidence, and all of it taken together,

103 fails to state or to substantiate any cause of action, or to show that any cause of action as alleged in the accusation filed in this case has been proven by the evidence introduced therein.

And for the further reason that the accusation charging conspiracy on the part of the defendants herein to cease or decrease the production of coal in the state of Kansas, or in the counties named in the accusation has not been proven and the evidence fails to show that there was any conspiracy resorted to or entered into by any of the defendants in this case; and further that no conspiracy for the purpose of limiting production has been proved. And for the further reason that evidence as introduced in this case fails to show that any strike was in fact called by the defendants herein; that such

evidence as has been sought to be introduced in this case for that purpose was incompetent, irrelevant and immaterial.

That the accusation against the defendants herein which seeks to charge a violation of the injunction issued by this court does not in words, or in fact, charge such violation, nor does the evidence introduced in support of said accusation prove any of the charges made in said accusation.

And for the further reason that all the evidence when taken together fails completely to prove any act of contempt of any order of this court, or any injunction issued by this court for the purpose of restraining the defendants herein against issuing an order, or a prohibition against issuing a strike order in the counties named in the accusation, for the reason that the evidence proves that the acts of the defendants and each and all of them do not come within the injunction.

104 And for the further reason that the state has failed by their evidence to show that the defendants named in said accusation have committed any of the offenses charged in said accusation.

And for the further reason that the evidence has conclusively failed to show that the mines of Crawford County, Osage County or Cherokee County have failed to produce, or that the production from said mines has been lessened by reason of any acts of the defendants herein, or any of them. That the continuity of production of coal in said counties has in any way been lessened by the action of the defendants herein, nor has the action of the defendants herein been shown to have produced an effect such as to cause the workers of the counties of Crawford, Osage or Cherokee to cease to work, or in any manner fail to produce in the same manner as they would otherwise have produced.

And for the further reason that the prosecution has utterly failed to show by competent evidence that the defendants herein issued a strike order, or that the defendants herein have carried out the instructions or directions of any of their qualified or lawfully qualified officials in the alleged strike, or in any way hindered or reduced the production of coal in any of the counties named in said accusation, and thereby violated the purpose for which said injunction was issued.

And for the further reason that evidence introduced by the prosecution has failed and has shown lack of jurisdiction of this court, lack not only as to subject-matter, but as to the parties to this cause, for the reason that the action of this court is in violation of the Clayton Act and in violation of the acts made as amendments to said Clayton Act, as well as the Lever Act, both of which enactments were made in pursuance of the provisions of the Federal Constitution of
105 the United States, and which Act completely excludes and renders invalid any action by the District Courts in the field covered by those Acts, and for the reason that the fields covered by the Acts referred to do cover the exact and precise situation that has been shown to have existed in this case. For the further reason that this court is without jurisdiction for the reason that the evidence

ows that the defendants were engaged in inter-state commerce and erefore not subject to the control of this court by injunction.

And for the further reason that all the evidence when taken to-ther shows that the acts performed by the defendants herein were pursuance of and within the authority of the Constitution of the te of Kansas and the Constitution of the United States, and in no violated any of the provisions of the laws of the state of Kansas the orders of this court.

And for the further reason that the evidence shows that the de-iants herein took such acts as tend to produce additional produc-n in the counties of Cherokee, Osage and Crawford rather than to en or reduce said production in said counties, which under the ms of the injunction under which these defendants are being tried dered said injunction of no force or effect, or in other words tends rove a lack of an offense against said injunction rather than an nse against or violation of the injunction.

for the further reason that the evidence has utterly and completely ed to show that the defendants, or any of them, have caused a ke for the purpose of interfering with or in any way hindering enforcement of the Industrial Court Law, as charged in the ac-cusation herein.

And the defendants James McIlwrath, John Fleming, Wil-lard Titus and Heart Maxwell do further and specially demur he evidence of the State herein for the reason that the evidence lly and utterly fails to connect them with the alleged acts com-ing which testimony was adduced here, and for the further rea-that all of said evidence taken together and considered as a whole not tend to prove they or any of them as parties or privies to any enjoined by this court.

nd for the further reason that the evidence, if any, against those ndants would merely tend to show they were engaged in inter-commerce, or acts in connection therewith, and for that reason court would have no jurisdiction of the subject-matter of this n.

or each and all of these reasons the defendants, and each of ask that they be discharged with their costs.

hich demurrer of the defendants, and each of them, is by the overruled, to which ruling defendants at the time duly ex-d and except.

d the defendants, to maintain the issues on their part claimed, l the following witnesses in the following order, to-wit:

W. MACKIE, being first duly sworn, testified as follows:

Direct examination.

By R. S. Brennan.

State your name.
J. W. Mackie.
Where do you live?
Scrammon, Kansas.

Q. What is your occupation?

A. I am bookkeeper for the George T. Mackie Fuel Company.

Q. Is that the company that operates mine J and Mine H?

A. Yes, sir.

107 Q. That we have heard testimony here concerning?

A. Yes, sir.

Q. You were in court during that testimony?

A. I was here this forenoon.

Q. As bookkeeper have you a general acquaintance with the destination of the shipments that are made from the mines?

A. In a general way, yes, sir.

Q. Can you state whether any of the coal mined from the month of April, 1920, to the 14th of September, 1920, inclusive, was shipped from those mines outside the state of Kansas?

To which the State objects for the reason it is incompetent, irrelevant and immaterial, which objection is overruled, and State excepts.

A. I presume it was. I couldn't say positively without looking at the records on those certain dates.

Q. Within those dates did some go outside the state of Kansas?

A. I couldn't swear to that, but I expect it did.

Q. Do you know that any of it went into the state of Missouri?

A. Those particular dates?

Q. Between those dates?

A. Well, I couldn't say between those dates. I didn't look it up, you know.

Q. Have you your records here where you could find out, Mr. Mackie?

A. Records in the clerk's office, yes, sir.

Q. Would you mind looking up and finding out exactly from April 1st, 1920, to September 14th, 1920?

A. If we shipped coal into Missouri.

Q. Yes, sir.

A. There was coal loaded at those mines that was shipped into Missouri.

Q. And did you ship coal into other states during that period?

A. Yes, sir.

108 Q. You were in the same position with those mines all during February of this year?

A. Yes, sir.

Q. And during the month of January, 1921?

A. Yes, sir.

Q. Now, can you tell if the mines were running full time since January 21st, 1921, those two mines H and J?

A. My recollection is that mine H run practically full time all three or four days prior to the 1st of February, and mine J run almost full time until about two weeks prior to that time. That is my recollection. I wouldn't say positively.

Q. What was the cause of running part of the time only?

A. I presume lack of orders.

Q As I understand you people have charge of that question?
A On the shipment of coal?
Q. Yes, sir.
A. No, sir.
Q. Who does that?
A It is done through the billing office.
Q Now, do you know of any shipments of coal outside of the ...e of Kansas from those two mines during the month of January, ...21?
A I didn't look that up.
Q Well, would you know generally?
A Well, the chances are there was, but I wouldn't say positively.
Q Now, from January 1st down to the date that work ceased at ... two mines, Mr. Mackie, were any shipments made from those ... outside the state of Kansas?
A Well, as I said before I didn't look that up I rather think ... would be.
Q Now, does your company have a sales office outside of the ...e of Kansas?
A. No, sir; we sell our coal through the sales office, sales agency.
Q Have you a sales agency in Kansas City?
A Yes, sir, they have an office in Kansas City, Missouri.
Q What is the name of that sales company?
A Mackie-Clemens Fuel Company
Q. And do they sell from that office to your place?
A. Yes, sir.
Q And it is billed from you?
A I don't understand what you mean.
Q As I understand your testimony, you have a sales agency in ... City, Missouri, to whom you sell coal?
A Well, the office is in Pittsburg.
Q Well, now, when coal is shipped on orders coming from the ...kie-Clemens Fuel Company, Kansas City, Missouri, are the ship... billed to that company?
A We turn the car numbers over to the Pittsburg office and they ... the coal.
Q Do you know to whom they bill it?
A From the copy, yes, sir.
Q Do they bill it to the Mackie-Clemens Fuel Company?
A To whoever it is sold to.
Q And you know that in some cases they sell to purchasers or ... in Missouri?
A Yes, sir.
Q And that was the condition in January, 1921, and February, ...?
A Well, I looked up the others I didn't look up those months
Q I mean your condition of selling?
A Yes, sir, I suppose so.

Cross-examination.

By F. S. Jackson

Q. This sales company you speak of, does it act as agent fo
mining company or is the coal actually sold to the sales com
A. Sold to the sales company.
Q. They settle with the ultimate consumer and then sett
your company?
A. Yes, sir.
Q. And their office is in Pittsburg?
A. General office, yes, sir.
110 Q. And the mines are in this county and state?
A. One in this county and one in Cherokee Coun
Q. And it is billed by the sales agency?
A. Yes, sir.
Q. And some of it goes to customers in Kansas and s
other states?
A. Yes, sir.
Q. The destination of the coal is finally determined by th
company?
A. Yes, sir.
Q. Here in Pittsburg, to whom your company sells the co
A. Yes, sir.

Redirect examination

By F. S. Brennan

Q. Does the money come to the company here in Pittsbu
the Mackie Clemens Fuel Company?
A. You mean do they collect?
Q. Yes, sir.
A. Yes, sir.
Q. And does the coal go direct from the mines to the
Clemens Fuel Company?
A. They give the billing on it each day as it goes out a
give them the number of the cars.
Q. And they remit for it through the office of the compa
in Pittsburg, is that right?
A. Yes, sir.

Recross examination

By F. S. Jackson

Q. You say the Mackie Clemens Fuel Company, or what
name of this company is, has an office here in Pittsburg?
A. Yes, sir.
Q. What is the name of that company?
A. Mackie-Clemens Fuel Company.

Q. And the name of the mining company is the Mackie Fuel Company?
A. No, the George K. Mackie Fuel Company.
Q. Is it incorporated?
A. Yes, sir.
Q. And the destination of the coal is controlled by the orders given by the sales company?
A. Yes, sir.
Q. After the coal is mined?
A. Yes, sir.
Q. And after it is loaded on cars in the state of Kansas?
A. Loaded on the cars at our mine and we turn it over to the sales company.
Q. And then the destination of the coal is determined?
A. Yes, sir.
Q. By the other company?
A. Yes, sir.
Q. By its billing?
A. Yes, sir.
Q. Is that done on commission by the sale company or do you actually sell the coal to them?
A. I don't understand your question.
Q. Is the selling by the sales company done on commission from your company, the mining company?
A. Yes, sir.
Q. Well, I understood you to say a moment ago that you actually sold the coal to the sales company?
A. No, I said we turned the coal over to them, that is the car number.
Q. You didn't mean to say you actually sold the coal to them?
A. The sales company collects for it and pays us for it.
Q. And they do that on a commission?
A. Yes, sir.

A. J. CURRAN,
Judge District Court, Division No. 1

Finding of Fact and Conclusions of Law.

1.

The court does find as a fact that the men employed in mines designated and known as Mines "H" and "J" were engaged in the production of coal shipped without the State of Kansas, to-wit: to the State of Missouri.

2.

The court finds that the miners at Mines "H" and "J" referred to in the accusation were * * * engaged in interstate commerce at the time they were ordered to strike, on or about February 7, 1921.

3.

Does the court find that the defendants herein, separately or jointly conspired and confederated together or arranged each the other to call a strike in the Counties of Cherokee, Osage Crawford, or in any of said counties for the purpose of diminis hinderance or reducing the production of coal in said counties

4.

Does the court find that the acts alleged to have been commit the defendants herein, caused or threatened to cause irreparable erty loss on the part of the State of Kansas or any of the rela this action

5

Does the court find as a fact that any coal was shipped w the State of Kansas from Mines "H" and "J" between the d September 30, 1920 and February 7, 1921.

6

Does the court find as a fact that the interruption of the tions of mines denoted and known as Mines "H" and "J" have interfered with the production of coal in the State of Ka such an extent as to effect the health, morals or public safety citizens of the State of Kansas or the citizens of surrounding

7.

Does the court find that Section 4146 or 4149 of Statute of have been repealed"

113 8

Does the court find as a fact that the operators engaged operation of mines denoted and known as Mines "H" and "J federated and conspired with each other in their refusal to in a reasonable or equitable manner, wage controversies b their employees and themselves with the intent and purpo said refusal should force said employees to strike to obtain s settlement or for any other cause

9

Does the court find as a fact that any coal was shipped the State of Kansas from the Mines "H" and "J" between th of April 1, 1920 and September 30, 1920, inclusive

10.

Does the court find that the defendants herein conspired or ar
ged each with the other, to call a strike in the Counties of Craw
d Cherokee and Osage, or any of said counties for the purpose of
ying, hindering or delaying the enforcement of a law denoted
known as the "Law Creating the Court of Industrial Relations."

11.

Does the court find that the strike or strikes called by the defend
s herein in and of itself, separate and apart from other causes
ished or reduced the production of coal in the Counties of
erokee, Osage and Crawford.

12.

Does the court find as a fact that the strike or strikes alleged to
e been called by the defendant herein and as proved by the evi
e introduced on the part of the state shows a violation of the
sions of the Law Creating the Court of Industrial Relations.

13.

The court does declare as a matter of law that the constitutionality
validity of the Law Creating the Court of Industrial Relations de
ted and known as Chapter 29 of the Laws of the *Special* Session of
Legislature of the State of Kansas of 1920, is not involved in the
nt proceedings before this court.

14.

The court does declare as a matter of law that the constitutionality
validity of the Law Creating the Court of Industrial Rela
denoted and known as Chapter 29 of the Laws of the Special
n of Legislature of the State of Kansas of 1920, is involved
present proceedings before this court.

15.

Does the court find that the defendants herein, separately or con
tely called a strike or strikes in the Counties of Crawford,
erokee and Osage for the purpose of hindering, delaying or di
shing the production of coal in the State of Kansas.

February 16, 1921

The court declines to answer the foregoing special interrogatories submitted to the court by said defendants (State v. Thomas, 74 Kansas 360, 369; Vickers v. Buck, 70 Kansas 581, 586; Lumber Co. v. Russell, 93 Kan. 521, 525). Said defendants except.

A. J. CURRAN,
Judge of Dist. Court, Division No. 1.

Indorsements: No. 6166. Filed Feb. 16, 1921. Edna M. Burns, district clerk.

115 *Journal Entry.*

Present: A. J. Curran, Judge Div. No. 1, Edna M. Burns, Clerk, Milt Gould, Sheriff, John Halliday, Court Bailiff, L. H. Winter, Court Reporter, C. A. Burnett, County Attorney.

Now, on this 7th day of February, A. D. 1921, the same being one of the regular judicial days of the November, 1920, term of the above entitled court, this cause came on for hearing upon an affidavit filed herein by Richard J. Hopkins, Attorney General of Kansas, and C. A. Burnett, County Attorney of Crawford County, Kansas, charging contempt of court wherein the defendants, Alexander Howat, August Dorchey, Thomas Harvey, James McIlwrath, John Fleming, Thomas Cunningham, Amos Standering, Willard Tice and Hearl Maxwell had violated the permanent injunction heretofore issued by the above entitled court on the 11th day of September, 1920.

The plaintiff appeared by Richard J. Hopkins, Attorney General, E. S. Jackson, Attorney for the Court of Industrial Relations of the State of Kansas, and C. A. Burnett, County Attorney of Crawford County, Kansas. Thereupon the plaintiff introduced oral testimony in support of its affidavit and application for an order of attachment. The witnesses were examined on the part of the State by E. S. Jackson, attorney for the plaintiff, and said witnesses were cross-examined on the part of the defendant by James H. Callery. And, thereupon, it appearing upon the evidence submitted by the plaintiff, and said affidavit, that there is reasonable grounds for believing that the defendants, members of the District Executive Board of District No. 14 of the United Mine Workers of America, have violated the orders, commands and requirements of said injunction.

It is, therefore, ordered that attachment be issued for the arrest of said defendants requiring that they be brought into court to make answer of the charges made against them by said affidavit.

And, thereafter, said defendants having been arrested and brought into court *and* there appeared each in his own proper person the defendants, Alexander Howat, August Dorchey, Willard Tice, Thomas Cunningham, and Thomas Harvey, and the defendants James McIlwrath, Hearl Maxwell, John Fleming, John Billings and Amos Standering, appeared by their attorney, James H. Callery

announced in open court that he appeared for each and all of defendants charged herein.

Thereupon, Richard J. Hopkins, Attorney General, and C. A. nett, County Attorney, asked and obtained permission of the rt to dismiss said charges as to defendants, Thomas Harvey, omas Cunningham, John Billings and Amos Standering.

The verbal answers of the defendants to said charge, and the stimony at said time having shown that the defendants, Thomas rvey, Thomas Cunningham, John Billings and Amos Stander- were not guilty of any of the said charges and that they had not any way violated the orders and commands of said injunction, s ordered that said proceedings in contempt be dismissed as- inst them.

It is further ordered that the plaintiff file, forthwith, formal ten accusation against the defendants, Alexander Howat, August rdley, James McIlwrath, John Fleming, Willard Titus and Heard xwell, and that said defendants file their answer to said accusation, in writing, on or before February 8, 1921, at 1:30 p. m., and that said cause be heard on the issues joined by said accusation and the answers thereto on the 8th day of bruary, 1921, at 1:30 p. m., and that each of said defendants released on *their* own recognizance in the amount of five hundred 500.00) dollars each for their appearance at the time of said trial. Thereafter, at 1:30 p. m. on the 8th day of February, 1921, said se came on for trial. The defendants, Alexander Howat, August rdley, James McIlwrath, John Fleming, Willard Titus and Heard xwell, appeared in their own person, and by their attorney, James Callery, and the plaintiff *appearing* by Richard J. Hopkins, At- rney General; C. A. Burnett, County Attorney, and F. S. Jackson, defendants asked and were granted a continuance of said trial 2:30 p. m., and that said time having arrived the plaintiff *earing* as before, and the defendants *appearing* as before and by r attorneys, Phil Callery and R. S. Brennan. And, thereupon, defendants, upon application, were given an extension of time in ch to file their answers to the accusation filed against them herein l February 11, 1921, at 10:00 a. m., and the cause set for hear- on the 15th day of February, 1921, at 9 o'clock a. m. on said day, l the defendants were ordered to enter into bonds in the amount ve hundred ($500.00) dollars, each, for their appearance at the of said trial and to abide the judgment of the court.

nd, it was further ordered that the personal recognizance of each id defendants be accepted on said bonds, and thereafter on the day of February, 1921, said cause accordingly came on for ring. All of the parties *appearing* as before and announced themselves as ready for trial.

Thereupon, the said plaintiff introduced its evidence and rested. And thereupon the defendants offered a demurrer aid evidence, and the court, after argument thereon, and being r advised in the premises, overruled said demurrer, the defend- duly excepting to said ruling. Thereupon said defendants oduced their evidence and rested. Thereupon all parties to said

cause rested their case. Further proceedings herein were continued until February 16, 1921, on the court's own motion, until 9 o'clock a. m. of said day.

Thereupon said time having arrived, the parties appearing as before, and the case having been duly argued, and the court being fully advised in the premises doth find that the said defendants Alexander Howat, August Dorchey, James McIlwrath, John Fleming, Willard Titus and Hearl Maxwell, on February 3, 1921, and for sometime prior thereto, were and now are, members of the District Board of District No. 14 of the United Mine Workers of America; and the said named defendants constituted a majority of said District Board of said District No. 14 of the United Mine Workers of America.

And the court further finds that the said named defendants, on or about February 3, 1921, as members of said District Board, voted that the miners and mine workers cease work at the George K. Mackie Fuel Company, Mines Numbers "H" and "J," said cessation of work at said mines to begin on Friday, February 4, 1921.

And the court further finds that the Local Unions of the United Mine Workers of America, to which the workers employed at said mines "H" and "J" of the George K. Mackie Fuel Company belonged, were notified by said District Board of District No. 14, of the United Mine Workers of America, of the said order that had been adopted by said District Board, ordering and di-
119 recting that the workers employed at said mines "H" and "J" cease work beginning February 4, 1921.

And the court further finds that upon the receipt of said order of the said District Board to cease work at said mines "H" and "J" all the mine workers employed at said mines ceased work in compliance with and in obedience to the said order of the said Board.

And the court further finds that the said members of the said District Board, wilfully caused the suspension of the operation of said coal mines "H" and "J," and the production of coal at said mines, for the purpose and intent of evading provisions of Chapter 29, Laws of Kansas, Special Session of 1920, being the act creating and establishing the Court of Industrial Relations of the State of Kansas.

And the court further finds that the allegations and averments of the accusation filed herein are true as to each of said named defendants.

And the court further finds that said defendants, and each of them, are guilty of the violation and disobedience of the terms and provisions of the judgment of injunction rendered herein on September 14, 1920, committed in the manner and form, time and place, as charged in the accusation filed herein.

And the court further finds that said defendants, and each of them, are guilty of contempt of the said injunction of the above entitled court, committed in the manner and form, time and place as charged in the accusation filed herein.

Said defendants, and each of them, object and except to each and
l of the above findings.

Now, therefore, in view of the premises aforesaid, the defendants,
Alexander Howat, August Dorchey, James McIlwrath, John
n Fleming, Willard Titus and Hearl Maxwell, and each of
them, were caused to stand before the court, and were by the
urt informed of the findings and judgment of the said court that
id defendants, and each of them, are guilty of contempt of court,
d of the violation and disobedience of the terms and provisions of
e permanent injunction heretofore rendered by the court on
ptember 14, 1920, and the defendants, and each of them, were
used to stand before the court for judgment and sentence, and
e inquired of by the court if there was any legal cause or reason
show why judgment and sentence should not be pronounced
on each of said defendants according to law, and no legal cause
reason being shown, or appearing to the court, it is by the court
nsidered, ordered, adjudged and decreed that the said defendant,
exander Howat, be confined in the jail of Crawford County,
nsas, for a period of one year and pay the costs of this prosecu
n, and be confined in said jail of Crawford County, Kansas, until
d costs are paid. Said defendant objects and excepts.

It is further by the court considered, ordered, adjudged and de
ed that the said defendant, August Dorchey, be confined in the
l of Crawford County, Kansas, for a period of one year and pay
e costs of this prosecution, and be confined in said jail of Craw
d County, Kansas, until said costs are paid. Said defendant
jects and excepts.

It is further by the court considered, ordered, adjudged and de
ed that the said defendant, James McIlwrath, be confined in the
l of Crawford County, Kansas, for a period of one year and pay
e costs of this prosecution, and be confined in said jail of Craw
d County, Kansas, until said costs are paid. Said defendant
objects and excepts.

It is further by the court considered, ordered, adjudged
and decreed that the said defendant, John Fleming, be con
ed in the jail of Crawford County, Kansas, for a period of one year
d pay the costs of this prosecution, and be confined in said jail of
wford County, Kansas, until said costs are paid. Said defendant
ects and excepts.

It is further by the court considered, ordered, adjudged and de
ed that the said defendant, Willard Titus, be confined in the jail
Crawford County, Kansas, for a period of one year and pay the
s of this prosecution and be confined in said jail of Crawford
unty, Kansas, until said costs are paid. Said defendant objects
d excepts.

It is further by the court considered, ordered, adjudged and de
ed that the said defendant, Hearl Maxwell, be confined in the jail
Crawford County, Kansas, for a period of one year and pay the
s of this prosecution, and be confined in said jail of Crawford
unty, Kansas, until said costs are paid. Said defendant objects
d excepts.

Thereupon, the defendants, and each of them, filed their motion herein for a new trial, which motion was by the court overruled. Said defendants, and each of them, object and except.

Thereupon, said defendants, and each of them, in open court, gave notice of appeal to the Supreme Court of Kansas, from each of said judgments and sentences, and made application for a stay of execution of said judgments and sentences pending the hearing of said appeal. It was thereupon ordered by the court that execution of said judgments and sentences herein be stayed, pending the decision of the Supreme Court upon said appeal upon said defendants,
122 and each of them, giving a good and sufficient bond in the sum of Two Thousand ($2,000.00) Dollars, conditioned as required by law.

Thereupon, on the 17th day of February, 1921, the defendants Alexander Howat, August Dorchey, James McIlwrath, John Fleming, Willard Titus and Hearl Maxwell, and each of them, filed herein his separate bond in the sum of Two Thousand ($2,000.00) Dollars, as heretofore ordered and directed by the court, and said court does hereby approve each of said bonds filed herein by each of said defendants and the execution of the judgments and sentences heretofore imposed by the court upon said defendants, and each of them, are hereby stayed, pending the final determination and hearing of the appeal of said defendants, and each of them, to the Supreme Court of Kansas.

A. J. CURRAN,
Judge Division No. 1

Indorsements: Case No. 6166. 1-5-21. Journal 8. Page 254-255. In the District Court of Crawford County, Kansas, Sitting at Pittsburg. The State of Kansas, ex rel. Plaintiff v. Alexander Howat, et al., Defendants. Journal Entry. Filed March 16, 1921. Edna M. Burns, District Clerk. Ex. "B."

Motion for New Trial.

Comes now the defendants above named by their attorneys of record, Phil H. Calbery and Redmond S. Brennen, and move the court for an order vacating and setting aside the judgment of said court heretofore and on the fifteenth day of February, 1921, rendered in the above entitled action, and grant to them and each of
123 them a new trial or hearing of said cause for the reasons and upon the following grounds, to-wit:

First. Because of the abuse of the discretion of the court during the trial of the case.

Second. Because of the erroneous rulings of the court during the trial of the case.

Third. Because the judgment rendered by the court is, both in part, and wholly, contrary to the evidence adduced at the trial.

Fourth. Because the judgment of the court is contrary to the law verning in the case.

Fifth. Because the court erred in overruling defendants' objection the introduction of any testimony on the part of the State in the id cause.

Sixth. Because the court admitted illegal testimony on the part the State over the objection of the defendants in the trial of the id cause.

Seventh. Because of accident and surprise during the trial which dinary prudence on the part of defendants could not have guarded gainst.

Eighth. Because the court erred in overruling defendants' demur- to the plaintiff's evidence.

Ninth. Because the judgment of the court was given under the in- uence of passion and prejudice.

Tenth. Because the defendants and each of them, since the trial the case, have discovered evidence material to the trial thereof, hich said defendants, nor either of the said defendants, could not ve, with reasonable diligence, discovered and produced at the trial.

PHIL CALLERY,
REDMOND S. BRENNEN,
Attorneys for Defendants.

24 February 16, 1921.

The above motion for a new trial submitted to court without argu- ent and the court being sufficiently advised in the premises doth erule the same. Said defendants, and each of them except.

A. J. CURRAN,
Judge of District Court, Div. No. 1.

Indorsements: No. 6166. Motion "D," page 354, 2-17-21. Mo- on for new trial. Filed February 16, 1921. Edna M. Burns, Dis- ict Clerk.

Notice of Appeal.

o the above-named complainant, the State of Kansas, and Richard J. Hopkins, Attorney General of the State of Kansas, and C. A. Burnett, County Attorney of Crawford County, Kansas, attorneys of record for complainant above named:

The above named complainant, the State of Kansas, and its attor- eys of record, Richard J. Hopkins, Attorney General, and C. A. urnett, County Attorney of Crawford County, Kansas, are hereby otified that the above named defendants, and each of them, appeals om the court's findings of fact and conclusions of law and from the dgment and orders of the above entitled court hereinbefore made

and entered in the above entitled case on the 16th day of February, 1921, in which judgment was rendered by said court in favor of said complainant and against said defendants, and each of them, and sentence passed by the said court upon said defendants, and each of said defendants, upon the said date, and the defendants, and each of *said defendants, upon the said date, and the defendants and each of* them appeals from said judgment and sentence

First. From the order and judgment of the court in overruling each of defendant's motion to quash the accusation filed herein

Second. From the order and judgment of the court in overruling each of defendant's objection to the introduction of any testimony in the case.

Third. From the order and judgment of the court in overruling each of the defendant's demurrer to the State's evidence and motion for the discharge of the said defendants

Fourth. From the order and judgment of the court in overruling each of defendant's motion for a new trial.

Fifth. From the order and judgment of the court in overruling defendant's motion in arrest of judgment

and appeals from the judgment and all orders and rulings of the court generally and from all of the final orders, findings and rulings made and entered by said court in the above entitled cause adverse to the defendants, and each of them, and in favor of the complainant, and of all of the above and foregoing you are hereby notified and you will duly take notice of the same

PHIL CALLERY
REDMOND S. BRENNEN,
Attorneys for Defendants

We, the undersigned attorneys of record for the complainant above named, acknowledge service of a copy of the above and foregoing notice of appeal on us this 16th day of February, 1921.

FRED S. JACKSON,
C. A. BURNETT,
RICHARD J. HOPKINS,
Attorneys for Complainant

Endorsements: 6166. Notice of Appeal. Filed Feb. 16, 1921. Edna M. Burns, District Clerk.

126 *Certificate*

I, Edna M. Burns, clerk of the District Court of Crawford County, Kansas, hereby certify the above and foregoing to be a full true and complete copy of the affidavit, accusation, order for attachment, w

of attachment, answer, journal entry, motion for a new trial, notice of appeal, as the same now appears of record and on file in my office in the above entitled case in said District Court of Crawford County, Kansas, sitting at Pittsburg, on a hearing held February 15, 1921. Being suit numbered 6186, wherein the State of Kansas et al. is plaintiff and Alexander Howat et al are defendants; said

Affidavit	Filed Feb	7, 1921
Accusation	Filed Feb	7, 1921
Order for attachment	Filed Feb	7, 1921
Writ of attachment	Filed Feb	7, 1921
Answer	Filed Feb	10, 1921
Special questions	Filed Feb	15, 1921
Journal entry	Filed March	16, 1921
Motion for new trial	Filed Feb	26, 1921
Notice of appeal	Filed Feb	26, 1921

This being a certified copy of the entire record of the above named papers in the above named hearing in the within entitled case.

In witness whereof, I have hereunto set my hand and seal of this office this 28th day of April, 1921.

[SEAL] EDNA M. BURNS
Clerk of the District Court of
Crawford County, Kansas

127 *Specification of Errors.*

I

The court erred in refusing to grant the defendants' application for a jury trial.

II

The court erred in overruling defendants' motion to quash the accusation filed in said cause.

III

The court erred in overruling defendants' objection to the introduction of testimony.

IV

The court erred in overruling defendants' objection to the introduction of testimony for the reason that the accusation failed to charge an offense as the Industrial Court Law, violation of which is enjoined, is void.

V

The court erred in admitting incompetent, irrelevant, immaterial and improper testimony over objection of defendants.

VI

The court erred in overruling defendants' demurrer to evidence.

VII.

The court erred in overruling defendants' special demurr the evidence.

The foregoing is a true and correct abstract of the record i above entitled case.

REDMOND S. BRENNAN,
Kansas City, Mo.
PHIL H. CALLERY,
Pittsburg, Kan.
Attorneys for Appella

17 Be it further remembered, That on the 10th day of 1921, there was filed in the office of the Clerk of the Su Court of the State of Kansas, a Counter Abstract of the R prepared by the appellee, which Counter Abstract of the Rec in the words and figures as follows, to wit:

18 Filed May 10, 1921. D. A. Valentine, Clerk Supreme C

In the Supreme Court of the State of Kansas.

No. 23505.

THE STATE OF KANSAS on the Relation of RICHARD J. Hop Attorney-General, and C. A. Burnett, County Attorney, in for Crawford County, Kansas, Appellee,

vs.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, R B. Foster, James McIlwrath, John Fleming, Willard Thomas Cunningham, The United Mine Workers of Am a Voluntary Association of Labor Union, Also Officers of Unions of said United Mine Workers of America of Distri 14 et al., Appellants.

APPELLEE'S COUNTER ABSTRACT OF RECORD.

Richard J. Hopkins,
Attorney-General.
John G. Egan,
Assistant Attorney-General.
Baxter D. McClaim,
Attorney, Court of Industrial Relations;
C. A. Burnett,
County Attorney of Crawford County, Kansas,
Attorneys for Appe

1 In the Supreme Court of the State of Kansas.

No. 23505

THE STATE OF KANSAS on the Relation of RICHARD J. HOPKINS, Attorney-General, and C. A. Burnett, County Attorney in and for Crawford County, Kansas, Appellee,

vs.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, ROBERT B. FOSTER, James McIlwrath, John Fleming, Willard Titus, Thomas Cunningham, The United Mine Workers of America, a Voluntary Association of Labor Union, Also Officers of Local Unions of said United Mine Worker of America of District No. 14 et al, Appellant

APPELLEE'S COUNTER ABSTRACT OF RECORD

This counter abstract contains the pleadings, judgments and the remainder of the oral testimony given on the trial of this case in the court below, and which the appellants neglected to include in their abstract herein.

History of This Case.

On April 5, 1920, the petition of the state of Kansas, on the relation of Richard J. Hopkins, attorney-general, and A. B. Keller, county attorney of Crawford county, Kansas, was filed in the district court of Crawford county, Kansas, against Alexander Howat, August Dorchy, James McIlwrath, John Fleming, Willard Titus and Heard Maxwell, Robert B. Foster, Thomas Cunningham, United Mine Workers of America, a voluntary association of labor union, and many persons, who were stated to be officers of local unions of said United Mine Workers of America of District No. 14, thereof, as defendants. There were about one hundred fifty defendants.

2 The first petition was filed April 5, 1920, the amended and supplemental petition April 12, and a further supplement to the petition was filed April 17, and the supplemental petition filed August 1, 1920. An answer of the defendants to the petition, as amended and supplemented, was filed. Upon a hearing had, the court issued a temporary injunction April 30, 1920, enjoining the defendants from various acts for which the injunction was prayed in the petition. The same acts covered by the temporary injunction were within the scope of the permanent injunction made September 14, 1920.

The petition as amended and supplemented alleged, among other things, that Richard J. Hopkins was the attorney-general of the state, and brought this action as said attorney-general on behalf of the state; and that A. B. Keller was the county attorney for Crawford county; that the United Mine Workers of America was a voluntary association of miners and workers in mines, organized as a labor union for the purpose of furthering the interest of the

members thereof in the United States, and that approximate
the miners employed in the mines in Crawford, Cherokee and
counties, Kansas, were members of District No. 14 of said U
Mine Workers of America, and the plaintiff was not informed wh
the said union was incorporated, but averred that District N
as well as said union, was a voluntary association.

That certain defendants were officers of District No. 14, Alex
Howat, of Pittsburg, Kan., being president; August Dorch
Pittsburg, Kan., vice president, Thomas Harvey, of Pittsburg,
secretary-treasurer, of said district, and that the board me
directors or trustees of said District No. 14 were the defe
James McElwrath, John Fleming, William Jenkins, Amos St
ing, John Billings, and the defendant Willard Titus had
elected as successor, as director, of said William Jenkins, th
defendant Thomas Cunningham was the traveling auditor, age
representative of said District No. 14, that various defendant
the presidents of the local unions of said District No. 14, and v
defendants were the pit committees of said local unions of
mines. That the defendants Alexander Howat, August D
Thomas Harvey, James McElwrath, John Fleming, Amos St
ing and John Billings and Willard Titus and Thomas Cunnin
in their said official capacities of said District No. 14, to
with the local unions of said District No. 14, and the
and members of said local unions, and other persons
plaintiff unknown, were unlawfully conspiring and entera
unlawful arrangements and confederations with themselv
others, with the intent and purpose of violating the laws of
and particularly the act creating the Court of Industrial Re
enacted in the special session of 1920, being senate bill No. 1
session (chapter 29, Laws of 1920).

That said defendants, in pursuance of said conspiracy a
illegal arrangements, were threatening, and about to direct
have directed the members of said labor union and the offic
persons in authority thereon to call a general strike of th
workers in the mines in said counties in Kansas for the pur
causing all of said mine workers to simultaneously quit th
of their employers, and thereby cause a cessation of the wor
said mines and to unlawfully prevent the continuity of th
and thereby endangering the peace and order of the coun
in which said mines were located.

The defendant Howat had publicly threatened and announ
he was about to call such a strike and would so do early i
and that he proposed to fight the said statute establishing th
of Industrial Relations with a force of 12,000 miners in Kan
that regardless of consequences, he would give the governo
state cause to remember that organized labor must and will
right to cease work at its will, and that there was no power
injunction or otherwise that would make him call off such
That the miners had pledged him and others their su
the fight he proposed to make against said statute in car
such fight, and that such fight would be in the near futur
the said defendants in the case were conspiring and confe

with the defendant Howat in causing said announcement to be given out and published, and that the defendants in the case propose, by means of said threatened strike, among other things, to nullify the force and effect of said statute and other laws of the state.

That in pursuance of said conspiracies and arrangements the members of said labor union had simultaneously quit their work for their employers in the counties of Crawford and Cherokee, and were remaining away from work and unlawfully persuading others to do so, and were intimidating their coworkers and other employees of said employers for the purpose of causing said mines to be shut down, and unlawfully limiting the production thereof, and assigning as a reason therefor their opposition to the law creating the Court of Industrial Relations, and some other causes of minor significance, and that said action was being taken with the consent of and in collusion with the district officers of said labor union, defendants in the case.

That the plaintiff believed that said action would continue during the next few months for said purposes, and that the plaintiff was interested in a reasonable continuity of the operation of said mines during the pendency of said litigation.

That under the terms of the constitution of said labor union and of the contracts of members of said labor union with their employers in making collective bargaining, the members of said union were under the control and direction of the defendants.

That the defendants herein plan, intend and threaten by means of the strike which they threaten to call as aforesaid, and in pursuance of said conspiracy and by acts and threats in carrying out said strike and conspiracy, to stop the operation of the coal mines in which said coal miners are employed in the state of Kansas, being nearly all of the coal mines within the state, and especially within said counties, and to stop the production of coal from said coal mines, and to stop the production of nearly all the coal being produced in the state of Kansas, and to stop the operation of railroads and public utilities and manufactories and business throughout the state of Kansas, including all of the public utilities enumerated and described in chapter 238 of the Laws of 1911 and the Court of Industrial Relations act, excepting the production, sale and distribution of natural gas, and the other industries, businesses and commerce enumerated in the Court of Industrial Relations act; and to stop the operation of buildings, institutions and industries owned or operated by the state of Kansas in the conduct of its government affairs, and to cut off the supply of coal for household and other uses throughout the state of Kansas until such time as the defendants shall give their consent to a resumption of the operation of said mines, railroads, public utilities, businesses, and to the supply of coal for household and other uses throughout the state of Kansas, and an opportunity has been had, after the defendant shall give such consent, to mine and provide coal for said purposes; all of which willful and unlawful acts on the part of said defendants and conspirators will hinder, delay, limit and suspend the continuous and efficient operation of the coal mines aforesaid within the

state of Kansas, and that such acts of said defendants and co
ators are being taken and carried out with the purpose and in
of violating the provisions of said laws, including the law provid
for the creation of the Court of Industrial Relations."

That a controversy exists between the miners, constituting
membership and officers of said labor union, and the emplo
operating said mines, that involve the amount of wages receive
the miners and other living conditions of the miners in the vici
of said mine; that said controversy, or parts of it, had been regul
brought before the Court of Industrial Relations of the state, as
vided by law, on the motion of the attorney-general, and that
court was proceeding as expeditiously as possible, under the law
hold hearings and to make investigations and reach a determina
on the questions involved, and that said acts of the defendants
their conspirators were intended to hinder and delay the state
the said court, and the attorney-general in said proceedings in
court, from reaching a full and final determination of said co
versies.

That the defendants had conspired and confederated tog
and threatened to induce and intimidate persons, firms and cor
tions operating said mines, and all workers therein who might n
members of said union, to fail and refuse to continue the oper
of said mines and the mining of coal therein, and to thereby hi
delay, limit and suspend the operation of lines of railroads, m
facturers and other industries and all other public utilities desc
in said statute, and that said buildings, institutions and indu
owned and operated by the state, and the doing of household
ing and the operation of households and the operation of every
kind of business in the state, and that the defendants have cons
and confederated with each other and members of said union
defendants, to quit their employment to accomplish said pur
and effects, and that they threatened and intimidated, by mea
threats and abuse and other means, other persons for the purp
preventing other persons from accepting employment in said

That said defendants threatened to willfully use the p
authority and influence incident to their respective o
positions to intentionally influence, impel and compel
persons to aid, suffer or submit to the carrying out of said plan
purposes for the purpose of violating the provisions of said st

That all of said acts committed or threatened by defendant
seriously affect and injure the public welfare of the people of
sas and threatens and will injure the public health of the peo
the state.

The mining and production of coal is included in the te
said statute and defined as a business affected with the public in
and that said business is one in which the public has an interes
that the state in carrying on its governmental business was
pelled to purchase during the year, and did purchase and us
one hundred thousand tons of coal, at a cost of approxi
$210,000, which coal was used as fuel and power at the state i
tions maintained and carried on by the state for charitable and

public purposes, and that by said conspiracy to hinder, delay and suspend the production of coal the state would be unable to procure a sufficient quantity of coal for the state institutions during the coming year, and that the state will require in the coming year not less than the same amount of coal used by it in the last year; and that in order that it can procure such coal, it was necessary that the said mines be operated with reasonable continuity during the summer months of the present year in order to produce the same.

That the acts threatened by the defendants in pursuance of their conspiracy will hinder, delay, lessen and stop the manufacture, production and transportation and supply of food and of the necessaries of life for the use of the people of the state, and will prevent the carrying on of business, commerce, industries, occupations and work in the usual manner by the people of the state, to the irreparable injury of the state and its people and property.

That the same defendants, in or about the month of December, 1919, in pursuance of the conspiracy then formed and existing between them, caused a cessation of work by the miners at said mines, and had put into effect a general strike of said miners in said District No. 14, and thereby the miners left their work and caused a cessation of the production of the mines and a shutting down of the same. That as a result great suffering and loss resulted to the people of Kansas, and in many cases the public health and lives of the people were endangered; and the governor, acting by and through the attorney-general, was compelled, in order to prevent widespread suffering and disaster to the people of the state, to take possession of said mines (in Crawford and Cherokee counties) and operate the same by receivers acting for the state. That the defendants in the present situation were acting with full knowledge of said loss, suffering and endangering of the lives and health of the people which had been caused by said strike of December, 1919, and had the intention to produce all the evil consequences to the state of Kansas and the people of the state hereinbefore alleged.

That in carrying out the conspiracy the defendants, the said Alexander Howat, August Dorchy, Thomas Harvey and Robert B. Foster, had refused to obey subpoenas, which had been duly issued by the Court of Industrial Relations and served upon them, to require them to appear before the Court of Industrial Relations and to give testimony and information in matters pending before said court, wherein it was making investigation of the working conditions, hours and circumstances surrounding the mining of coal in Crawford and Cherokee counties, wherein a public hearing had been begun in Pittsburg, Crawford county, April 6, 1920. That the said persons in refusing to obey said subpoenas assigned as a reason their opposition to said statute; and that said persons had also refused to obey similar subpoenas issued for like purposes issued out of the district court of Crawford county, and had been, on April 9, 1920, sentenced by said district court, in lawful proceedings for contempt, to the jail of Crawford county, there to remain until they should submit themselves to be sworn and give their testimony in the proceedings pending in the Court of Industrial Relations.

That the said Alexander Howat, August Dorchy, Thomas Harvey and Robert B. Foster had been committed to jail under said sentence, and that said four persons had formed a conspiracy between themselves and other defendants to cause all the miners within the jurisdiction of said labor union in the state of Kansas and in said
Crawford and Cherokee counties to simultaneously quit work-
8 ing for their employers and to compel the shutting down of said mines in said counties, and to hinder and interfere with the continuity of said mines and the lessening of production thereof, in order to compel the owners of the mines to yield to the command of the miners and confederates in the controversy existing between employers and employees, members of said confederation, over wages and other labor conditions, and to destroy the force and effect of the laws of the statute, including the statute creating the Court of Industrial Relations.

That all of said unlawful conduct by the defendants caused irreparable injury to the people of the state and to the state, and will cause results and injuries to the public and to the state heretofore alleged, and that said threats and unlawful and willful acts of the defendants will be carried into effect unless restrained by the said district court.

That in pursuance of said conspiracy the said defendants have caused to be enacted a pretended amendment to the constitution and by-laws of said District No. 14, Mine Workers Union of America to impose a fine of fifty dollars for each offense upon any member, pit committee or local officer who would be a party in referring a case to the Court of Industrial Relations over the heads of the district officials; also another pretended amendment to said constitution, that any district officer of said District No. 14 who would be a party to refer any grievance to the Court of Industrial Relations would be fined a sum of $5,000, such fines were to be paid into the district treasury of the United Mine Workers. That said amendments have been enacted for the purpose of preventing any officers or members of said District No. 14 from presenting complaints to the Court of Industrial Relations and from receiving the benefits of said court and to thereby cause the statute to be ineffective, and also for the further purpose of causing violation of said statute by the members of the union and to obstruct the Court of Industrial Relations and other officers of the state in the enforcement of the laws by preventing the court from receiving evidence and information necessary for its action.

That the plaintiff was without adequate remedy of law to prevent the defendants from carrying out said conspiracy, and that irreparable loss and injury to the state and the people thereof would be
caused by the threatened acts of the defendants, unless the
9 court should by its injunction restrain the defendants from carrying into effect their unlawful conspiracy.

The plaintiff prayed for temporary injunction to enjoin the defendants from further conspiring with each other and with others, as aforesaid, and from carrying out such conspiracy, from interfering with the operations of said mines and the limiting of production

therein, or causing of the workers employed therein, or a greater number thereof, to cease employment simultaneously, and from otherwise influencing said workers to quit their employment in said mines, and from in any way causing the operation of said mines to be delayed, hindered and stopped, and from enforcing any penalties or other means of intimidation to effect such results. That a mandatory injunction be issued accordingly, and that upon the final hearing the injunction be made permanent. Costs were also prayed for.

In a supplement to the petition it is alleged that the defendants and other persons had quit their work in the counties of Crawford and Cherokee, and were remaining away from their work and unlawfully persuaded others to do so, and were intimidating their coworkers and other employees of said employers for the purpose of causing said mines to be shut down and unlawfully limiting the production thereof, and were assigning as a reason therefor their opposition to the statute creating the Court of Industrial Relations, as well as other minor causes, and that said action was taken with the consent and collusion of the officers of said labor union, defendants in the case.

The answer of the defendants admitted some of the allegations and denied others. It denied the making of an unlawful conspiracy or of a conspiracy to quit work for an unlawful purpose, or to endanger the peace and safety of the community, or for the purpose of doing any unlawful act, and alleged that all of the actions of the defendants were for lawful purposes. It denied any right of the Court of Industrial Relations to in any way determine for the defendants the controversies between them and their employers.

Among other things the answer stated:

"They allege the facts to be that, whatever cessation of work, or intent to cease work, there may have been, was solely and only in the exercise of their lawful rights, for the purpose of improving their working conditions and increasing their wages; and whatever effect their ceasing work may have had upon the production of coal, was incidental to and in the exercise of their legal and constitutional rights; and the stoppage in the operation of the production of coal, if any, was not the primary purpose, but merely the incidental effect incident to the exercise of their lawful rights."

The denials of the defendants as to most of the acts, or threatened acts, of the defendants alleged in the petition were, in substance, that any such acts or threats that the defendants might have committed or made were not unlawful. They allege that the investigation by the Court of Industrial Relations, referred to in the petition, was made for the purpose of creating strife among the members of the Mine Workers' Union, and to make new contracts, without their consent, with their employers; and that whatever fines their union had imposed were for the purpose of maintaining the constitution and discipline of the union. They allege that the said statute creating the Court of Industrial Relations was in violation of the Federal

constitution and the constitution of the state. They allege that t
acts of the Court of Industrial Relations were in violation of
constitutional rights of the defendants under the Federal and st
constitution, and that the court was without power or authority
issue a restraining order and temporary injunction or a final injun
tion in the case.

A hearing of the case by the district court on the application
a final injunction was had September 14, 1920, being one of t
judicial days of the May, 1920, term of the district court. T
state introduced evidence; the defendants demurred thereto; dem
rer, having been argued, was overruled. Thereupon the attorn
for defendants and each of them announced that no testimony wo
be introduced on behalf of the defendants, and they rested. The
upon arguments of counsel were heard. The court made its findi
and decree in favor of the state, and it found:

"That all the averments, statements and allegations contained
plaintiff's amended and supplemental petition filed April 12, 19
and in plaintiff's supplemental petition filed August 20, 1920,
true, and the court further finds the issues joined herein in favor
the said plaintiff and against the said defendants and each of the
and the court further finds, upon proof offered, that the tempor
injunction heretofore made and issued in this action on Ap
11 30, 1920, should be made permanent; to which findings
defendants excepted."

It was ordered, adjudged and decreed as follows:

"That the temporary injunction heretofore made and issued
this court on the 30th day of April, 1920, be and the same is here
made permanent, and it is hereby ordered, adjudged and dec
that each of said defendants in said entitled cause, and all other p
sons acting in conjunction with or under their orders and inst
tions, and their agents, employees and representatives, are her
perpetually restrained and enjoined from directing, ordering or
any manner bringing about the hindering, delaying, interfer
with or suspension of the operation of any coal mines in the coun
of Crawford, Cherokee or Osage, in the state of Kansas, and of
mining of coal at any of said mines, and from causing the mi
or members of said labor union to quit their work at said mines
the purpose or purposes of hindering, delaying, interfering with
suspending the operation of any coal mines in said counties,
from intimidating by threats, abuse or in any other manner
person or persons with intent to induce such person or persons fr
accepting employment or remaining in employment at said mi
and from in any way whatsoever carrying out any conspiracy for
execution of any of said purposes.

"And the said defendants and persons are further perpetually
joined and restrained from entering into, maintaining, or carry
out any conspiracy between themselves, or between themselves
any other persons, formed or entered into for the purpose of prev
ing the operation of said coal mines with reasonable continuity

efficiency, and from, to any extent, willfully hindering, delaying, limiting or suspending the continuous and efficient operation of said coal mines with the purpose or intent of evading the provisions of the laws of the state of Kansas, and particularly the act creating the Court of Industrial Relations of the state of Kansas and defining its powers and duties, to wit, chapter 29 of the Laws of the Special Session of the legislature of the state of Kansas of 1920, and from violating any of the provisions of said laws.

"And the said defendants and each of them are further perpetually enjoined and restrained from influencing or impelling, by force or otherwise, or by threats, or by threatening penalties or fines, any person or persons from appearing in said Court of Industrial Relations in obedience to subpoena duly issued by said court or other courts of the state of Kansas and giving their evidence or testimony before said Court of Industrial Relations, or from filing complaints or applying to said court for such appropriate relief and
12 remedies as may be provided therein under the provisions of said law for workmen, employers or other persons and citizens of the state of Kansas.

"And the said defendants and said persons are further perpetually restrained and enjoined from enforcing, by threats, penalties or otherwise, against any of the members of the said labor union or any other person, the provisions of the amendments or pretended amendments to the constitution of the said United Mine Workers of America, District No. 14, in the state of Kansas, described and set forth in paragraph eighteen of the amended and supplemental petition in this cause, and from further attempting to put into effect or adopt as part of the constitution or laws, rules and practices of said labor union said amendments, or any amendments attempting to inflict upon any member, pit committee or local officer of said United Mine Workers of America, District No. 14, or any district officer thereof, as a punishment for or in consequence of any action taken by any said member or officer of said labor union, any penalty for applying to said Court of Industrial Relations for any right or remedy provided for therein, or for testifying as a witness before said Court of Industrial Relations under the provisions of said law.

"And the defendants and said persons are further perpetually restrained and enjoined from conspiring or confederating together or with each other to injure in any manner any person or persons or any corporation in his, their or its business, labor, enterprise or peace and security, by boycott or discrimination, or by picketing or advertising, by propaganda or other means, because of any action taken by such person or persons or corporation under any order of said Court of Industrial Relations of the state of Kansas, or because of any action or proceedings instituted in said court, or because any such person or persons or corporation shall have invoked the jurisdiction of said court in any manner provided for under the provisions of said law.

"And the defendants and said persons are hereby further perpetually enjoined and restrained from willfully causing any person, firm or corporation engaged in the production of coal in said counties

in the state of Kansas, or the operation of said mines, to limit or
crease operations for the purpose of limiting production, with the in-
tent of avoiding any of the provisions of said law; but nothing in
this order shall be construed as restraining or restricting the right of
any individual employee engaged in the operation of said mine to
quit his employment at any time; but said defendants and persons
are hereby perpetually enjoined and restrained from conspiring with
other persons to quit their employment for the purpose of hindering,
delaying, interfering with or suspending the operation of any of the
said coal mines, and from engaging in what is known as
13 picketing or intimidating, by threats, abuse or in any other
manner, any person or persons with intent to induce such per-
son or persons to quit such employment or deter or prevent any other
person or persons from accepting employment or from remaining in
the employ of any of the persons, firms or corporations operating the
said coal mines in said counties described in the petition herein.

"And the defendant officers and said persons are hereby further
perpetually restrained and enjoined from using his or their official
position, and by such means intentionally influencing, impelling
or compelling any other person to violate any of the provisions of
said chapter 29 of the Session Laws of the special session of the leg-
islature of the state of Kansas for 1920, and especially from inten-
tionally or willfully influencing, impelling or compelling any other
person to leave or quit his employment, or to induce such person
or persons to compel others to quit their employment, or prevent
ing any other person or persons from accepting employment or re-
maining in the employ of the industry of coal mining being car-
ried on at this time in said counties.

"It is further considered, ordered, adjudged and decreed that the
and defendants pay the costs in this action.

"The court retains jurisdiction of this proceeding for the purpose
of making such additional and supplemental orders as may
necessary and appropriate for securing the enforcement of this judg-
ment and decree."

On February 7, 1921, that being one of the regular judicial days
of the 1920 term of the district court, there was presented to the
court an affidavit filed by Richard J. Hopkins, attorney-general,
and C. A. Burnett, county attorney of Crawford county, charging
contempt of court against the defendants, Alexander Howat, Aug.
Dorchy, Thomas Harvey, Robert B. Foster, James McIlwrath, J.
Fleming, Willard Titus, Thomas Cunningham, Hearl Maxwell,
that they had violated the permanent injunction issued by the c
September 14, 1920.

This affidavit stated that on or about February 3, 1921,
Cherokee and Crawford counties, Kansas, the said defendants, b
then and there officers of District No. 14 of he United Mine Wor
of America, a voluntary labor union organization, together
George Young and E. E. Bosler, treasurer and secretary of
unions Nos. 498 and 310 of said District No. 14, intentionally
unlawfully directed and ordered the hindering, delaying, i

fering with and suspension of the operation of the coal mines in said counties of Cherokee and Crawford of the George K. Mackie Fuel Company, one located near Roseland, in Cherokee county, and the other near Cherokee in Crawford county, and the suspension of the mining of coal in each of said mines by unlawfully causing the miners and other members of said labor unions to unlawfully strike and quit their work at said mines for the purpose of unlawfully hindering, delaying, interfering with and suspending the operation of said coal mines, and that said defendants and said Young and Bossler, at said time and place, caused, by threats and intimidations, the miners and other members of said labor unions and all persons employed in said mines to quit their work at said mines and not to accept further employment or remain at work at the same, and by making and carrying out a conspiracy to carry into execution the said purposes.

That the said defendants by said transaction and conspiracy unlawfully caused said coal mines to cease operation and shut down, or to produce coal with reasonable continuity or efficiency, with the unlawful intent of avoiding the provisions and requirements of the laws of the state of Kansas, and particularly the act creating the Court of Industrial Relations of the state of Kansas, and defining its powers and duties, to wit (chapter 29, Laws of Kansas, 1920, was here set out); and for the further purpose of violating the commands of said permanent injunction of the district court.

The affidavit further stated that said conspiracy and purposes were carried out by said defendants, and said Young and Bosler and other agents and representatives, whose names were then unknown to the affiant, and thereby the mining and production of coal at said mines was limited and stopped.

The said acts were accomplished by said defendants by conspiring with each other in meetings held by the said district board, and by there deciding to cause said strike and suspension of work, and by causing unlawfully an order to be issued by said district board, or its officers, directly to said local unions and their officers and members, ordering and directing them to cause the miners and members of said unions and other persons employed in said mine to strike and cease and quit their employment in the operation and mining of coal in said mines.

That said order was entered on or about February 3, 1921, delivered to said local unions Nos. 198 and 310, or the officers or members thereof, and in pursuance of said orders and instructions of said district board of said local unions, was delivered on said date to the superintendent or other representatives of the George K. Mackie Fuel Company at or about said mines, and said order was read or communicated to the miners or employees of said company, members of said local unions.

That as a result of the premises the miners and employees, members of said local unions and other employees of said mining company, did then and there unlawfully strike and quit their employment and ceased operating said mines in the mining and production of coal therein, and limited the production of coal in said mine and

interfered with their operation and prevented such operation wi reasonable continuity and efficiency, all with the intent on the pa of said defendants to violate the laws of Kansas, and particular the Laws of Kansas, 1920, and with the intent to violate the com mands of said injunction of the district court.

The affidavit stated that the defendants were guilty of contemp of court and the commands of the injunction, and asked that proces be issued to bring the defendants before the court in order that th court might notice and properly punish said acts by this order.

The accusation thereafter filed was verified by the attorney-gene and the county attorney, and was identical in its statements with th said affidavit.

At the hearing before the district court on February 7, 1921, whe the affidavit was presented, the state introduced oral testimony i support of the affidavit and application for attachment. The de fendants were represented by their attorney, Mr. James H. Callery who cross-examined the witnesses produced by the plaintiff.

The court found that there was reasonable ground for believing that the defendants had violated the commands of the injunctio and ordered that an attachment be issued for their arrest and requi ing them to be brought into the court to answer the charges made against them.

The defendants were arrested and brought into court, and ap peared each personally and by his attorney, James H. Callery.

Thereupon the charges against the defendants Thom 16 Harvey, Thomas Cunningham, John Billings and Au Standering were, on the motion of the plaintiff, dismiss on the ground that their oral answers to the charges and the te mony had shown that they were not guilty of the charges.

The court then ordered that the plaintiff file forthwith a form accusation against the defendants Alexander Howat, August Dorch James McIlwrath, John Fleming, Willard Titus and Hearl Maxwe and that said defendants file their answer to said accusation, i writing, on or before February 8, 1921, 1:30 p. m., and that th cause be heard at that time. Said defendants, last named, we released in the meantime on their own recognizance in the amou of five hundred dollars ($500) each.

The plaintiff forthwith filed its accusation, and the case was co tinued from February 8 to February 15, and said defendants give until February 11 to file their answers to the accusation.

The defendants filed an answer attacking the validity of chapt 29, Laws of Kansas, 1920, and of the order of permanent injunctio and asserted that they had not committed any unlawful acts an had done nothing for the purpose of violating said chapter 29, an that the accusation did not state facts sufficient to constitute a vio tion of the injunction.

The hearing of the contempt accusation was had February 1 and 16, 1921. The plaintiff introduced evidence, the defend demurred thereto, the demurrer was overruled, and the defend introduced evidence and the case was argued by counsel for bo parties.

Thereupon the court made the following findings:

"The court being fully advised in the premises doth find that *that* e said defendants Alexander Howat, August Dorchy, James Mearath, John Fleming, Willard Titus and Hearl Maxwell, on Februy 3, 1921, and for some time prior thereto, were and now are mems of the district board of District No. 14 of the United Mine orkers of America; and the said named defendants constituted majority of said district board of said District No. 14 of the United ine Workers of America.

"And the court further finds that the said named defendants, on about February 3, 1921, as members of said district board, voted at the miners and mine workers cease work at the George K. ackie Fuel Company, mines numbers H and J; said cessation of work at said mines to begin on Friday, February 4, 1921.

"And the court further finds that the local unions of the United Mine Workers of America, to which the workers emyed at said mines H and J of the George K. Mackie Fuel Comny belonged, were notified by said district board of District No. of the United Mine Workers of America, of the said order that en been adopted by said district board, ordering and directing that workers employed at said mines H and J cease work beginning bruary 4, 1921.

"And the court further finds that upon the receipt of said order of said district board to cease work at said mines H and J, all the ne workers employed at said mines ceased work in compliance with d in obedience to the said order of the said district board.

"And the court further finds that the said members of the said trict board willfully caused the suspension of the operation of said d mines H and J, and the production of coal at said mines, for the rpose and intent of evading provisions of chapter 29, Laws of nsas, Special Session of 1920, being the act creating and establishg the Court of Industrial Relations of the state of Kansas.

"And the court further finds that the allegations and averments the accusation filed herein are true as to each of said named fendants.

"And the court further finds that said defendants, and each of em, are guilty of the violation and disobedience of the terms and ovisions of the judgment of injunction rendered herein on Sepmber 14, 1920, committed in the manner and form, time and place charged in the accusation filed herein.

"And the court further finds that said defendants, and each of em, are guilty of contempt of the said injunction of the abovetitled court, committed in the manner and form, time and place charged in the accusation filed herein."

And the court rendered the following judgment:

Now, therefore, in view of the premises aforesaid, the defendants exander Howat, August Dorchy, James McIlwrath, John Flemg, Willard Titus and Hearl Maxwell, and each of them, were ed to stand before the court, and were by the court informed of

the findings and judgment of the said court that said defendants and each of them, are guilty of contempt of court, and of the violation and disobedience of the terms and provisions of the permanent injunction heretofore rendered by the court on September 11, 1920, and the defendants, and each of them, were caused to stand before the court for judgment and sentence, and were inquired of by the court if there was any legal cause or reason to show why judgment and sentence should not be pronounced upon each of said defendants according to law, and no legal cause or reason being shown,

18 or appearing to the court, it is by the court considered, ordered, adjudged and decreed that the said defendant, Alexander Howat, be confined in the jail of Crawford county, Kansas, for a period of one year and pay the costs of this prosecution, and be confined in said jail of Crawford county, Kansas, until said costs are paid."

The same judgment was rendered against August Dorchy, James McIlwrath, John Fleming, Willard Titus and Hearl Maxwell.

The defendants thereupon each filed his motion for new trial, which motions were overruled. The defendants gave notice in open court of appeal to the supreme court of Kansas from said judgment and sentence, and applied for a stay of execution of the same, pending the hearing of the appeal. The court ordered a stay of execution pending the decision of the supreme court upon the appeal as to each defendant, upon his giving a good and sufficient bond in the sum of two thousand dollars ($2,000), condition as required by law. Defendants filed such bonds, which were approved by the court, and the execution of the judgments and sentences against the defendants was stayed, by order of the court, pending the final determination and hearing of the appeal in the supreme court of Kansas.

Some of the questions presented in the brief for the appellant have been determined by this court in the case of the The State v. Alexander Howat, August Dorchy, Thomas Harvey and Robert B. Foster, 107 Kan. 123.

The case of The State v. Alexander Howat, No. 25,573, set for hearing June 7, is an appeal by Howat from a judgment of the district court of Crawford county, punishing him by fine for another violation committed March 22, 1921, of the permanent injunction of September 11, 1920.

J. W. MACKIE, called by defendants, sworn. He testified to the following in addition to what appears in appellant's abstract:

Redirect examination.

By R. S. Brennan

Q. Who do you mean by the sales company?
A. The Mackie-Clemens Fuel Company.
Q. Over here or in Kansas City?
A. Yes, sir; the main office in Pittsburg.

Q. Do you know that the Mackie-Clemens Fuel Company have coal yard there in Kansas City?

A. Not to my knowledge.

Q. And does the Mackie Fuel Company have a coal yard up in Kansas City, Mo.?

A. No, sir.

Q. Does your company have a coal yard outside of the state of Kansas?

A. The George K. Mackie Fuel Company? No, sir.

Q. Do you have a sales office outside?

A. The George K. Mackie Fuel Company?

Q. Yes, sir.

A. No, sir.

WILLIAM L. HUGGINS, called by defendants, being first duly sworn, testified as follows:

Direct examination.

By R. S. Brennan:

Q. State your name please.

A. William L. Huggins.

Q. You are the presiding judge of the Kansas Court of Industrial Relations?

A. Yes, sir.

Q. You have been here attending this trial, this hearing since it started this morning?

A. Yes, sir.

Q. And you were here last September, or whatever date this case started—the application for contempt?

A. No; I wasn't personally present at the contempt proceedings.

Q. Did you instigate this injunction proceedings?

A. No; I think not.

Q. Who did—do you know?

A. The attorney-general of the state of Kansas, assisted by Mr. Jackson, the attorney for the Court of Industrial Relations.

Q. What was your participation in it?

A. I don't think I participated in it except in an advisory capacity.

Q. And were you here in Pittsburg, Kan., during September, 1920?

A. I don't remember that I was here in September.

Q. Do you remember being here along about that time?

A. I remember being here soon after the 1st of August. I don't remember the exact date.

Q. And then when was your next trip here?

A. Now.

Q. And you have heard the testimony here in this case?

A. Yes, sir.

Q. Have you any case pending before the Court of Industrial Relations in regard to this Mishmash case?

A. No, sir.

Q. Have you any case pending before the Court of Industria
lations in regard to the George K. Mackie Fuel Company rega
the claim of Mishmash?

A. Not to my knowledge; not unless it has been filed withi
last two days.

Q. Do you know generally about the cessation of work at
two mines concerning which we have had testimony here to

A. Nothing only what I saw in the newspapers.

Q. And what you heard here?

A. And what I heard here.

Q. The first you knew of the nature of the claim of this
man Mishmash is for wages claimed as having been ear
you only know that from what you have heard here?

A. Yes, sir; a question as to his age, as I understand

Q. And you can state, then, as far as you know, there is no
pending in your court concerning it?

A. Concerning the Mishmash case?

Q. Yes, sir.

A. No; not yet.

Q. Or the George K. Mackie Fuel Company as far as it affec
Mishmash case?

A. No.

Q. Have you caused or suggested the arrest of anybody con
with the George K. Mackie Fuel Company in connection wit
claim for wages for Mishmash?

A. No; I haven't. The Court of Industrial Relations h
criminal jurisdiction whatever.

Q. You don't have to have criminal jurisdiction to file a
plaint against a man?

A. Any person could file a complaint, but this court has no
nal jurisdiction.

Q. My question is, Have you filed any complaint, or caus
to be filed, or suggested that one be filed against the Geor
Mackie Fuel Company on account of this Mishmash claim?

A. No.

Cross-examination

By F. S. Jackson

Q. It is not the practice, not within the provisions of the la
the court to file claims?

A. No. Of course we have. We do have authority under t
to institute inquiries or an investigation, and that has been
over amongst us and the propriety of instituting an investigatio
this Mishmash case to find out what the facts are. That has bee
gested, and it has not been done for the reason that we thoug
proceeding ought to be disposed of first. Does that answe
question?

Q. The manner of procedure would be for the court, on it
initiation, to issue an order requiring an investigation?

A. And calling in the witnesses and finding out the facts, d

the facts so that the attorney-general might take such action as we thought proper under the law.

Q. And then take such steps as to what should be required to settle that claim?

A. Yes, sir.

Q. But any criminal action would be up to the attorney-general?

Objected to. Withdrawn.

Q. If a complaint had been filed by the miners complaining of the action of the coal company, would the court have taken jurisdiction?

The defendants, and each of them, object to the question, for the reason it is calling for the opinion and conclusion of the witness and not proper cross-examination.

By F. S. Jackson. It seems to me that it would be proper to show that the court is ready and willing to investigate any com-
21 plaint that might be instituted in reference to this matter. Is that true, Judge?

Defendants renew their objection, and object for the further reason that that is the presumption of the law.

Q. Concerning question of counsel, concerning the manner in which this injunction suit was originally instituted, do you know whether or not the attorney-general was asked by the governor of the state to institute this action?

A. Yes, sir; I know he was. I was present when that request was made.

Q. I will ask you one more question. I will ask you whether or not it is true that the suit was filed before the court ever came to this county to hold any investigations?

Same objection as last above made. Same ruling.

A. That is my recollection, that it was, but I might be mistaken on that. It has been quite a while ago, but that is my best recollection.

ALEXANDER HOWAT, called by defendants, being first duly sworn, testified as follows:

Direct examination.

By R. S. Brennan.

Q. State your name.

A. Alexander Howat.

Q. Where do you live?

A. Pittsburg, Kan.

Q. What position do you hold, if any, in connection with the mining interests in the state of Kansas or elsewhere?

A. President of United Mine Workers, District 14.

Q. Does District 14 embrace territory in Missouri and Kansas both?

A. It takes in all of Kansas except Leavenworth, and four or five counties in Missouri.

Q. The same office covers this territory you have testified concerning?

A. Yes, sir.

Q. You are one of the defendants herein?

A. Yes, sir.

Q. And you were in court today and heard the testimony?

A. Yes, sir.

Q. Now, did you hear the testimony concerning the Mishmash case given here?

A. Yes, sir.

Q. Did you also hear the testimony concerning the cessation of work in mine J and mine H of the Mackie Fuel Company?

A. Yes, sir.

Q. Just please, Mr. Howat, tell his honor what you know of your own knowledge concerning the negotiations with the Mackie Fuel Company that led up to the cessation of work there.

A. What led up to the strike?

Q. Yes, sir.

A. That question in regard to the Mishmash boy was taken up by the mine committee and the mine foreman at that mine. They failed to reach an agreement and the question was referred to our office. One of the members of the executive board took the matter up with the superintendent and they failed to reach an agreement.

22 Q. When was that?

A. Over two years ago. The question then was written up according to contract and referred to Mr. Richardson, representative of the coal association. Mr. Richardson represents all the coal operators in the district. The question was taken up by Mr. Richardson and myself and we failed to agree. It was then referred to the joint board of the mine operators, which was composed of Mr. Richardson and Mr. Harrigan, representing the mine operators, and Mr. Steele and myself, representing the miners.

Q. Is that according to contract?

A. Yes, sir. The money this boy was to receive—$5 a day—that was men's wages at that time. The boy when he became nineteen years of age, or some time after that, he learned that when he became nineteen he was entitled to men's wages, so he made a demand in accordance with the contract and the company refused to pay it, and that is how the case finally came up to myself and Mr. Richardson.

Q. Do you know when Mr. Mishmash made that demand for $5 a day?

A. It was probably two or three months after he became nineteen. He learned from some of the men he was entitled to $5 a day.

Q. Do you know when he became nineteen years of age?

A. Yes, sir; August 31, 1918. It was some time after that when he learned through some of the men of the organization that he was entitled to men's wages.

Q. You mean entitled under this same contract you have re-
rred to?
A. Yes, sir. The question was taken up and settled.
Q. Just there let me interrupt you. Was it in 1917 or 1918 that
e question of Karl Mishmash's age first came up?
A. 1918. That was when the boy became nineteen years
age, August 31, 1918, and I think, as near as I can remem-
r, it was probably a couple of months or so after that when the
y learned he was entitled to men's wages when he got to be nine-
en, so he made demand for men's wages dating back to the time
became nineteen. The question was taken up by myself and
r. Steele, representing the miners, and Mr. Richardson and Mr.
arrigan, representing the operators, and an agreement was reached
d signed up by Mr. Richardson and myself, which I have in my
cket, that this boy was to receive men's wages from the time he
came nineteen years of age. Now, you see, we settle six or eight
ses in a day, and then we make the record and sign over here.
ou see, we started some other cases after that, and then when we
ished the day's work we signed over here. There is the signature
erwards. That is page 1191. Here is the decision in the Mish-
ish case on page 1185, and here is where we signed over here.
Q. Now, Mr. Howat, I will ask you if you can state what these
eets are—these four sheets of paper which I hand you?
A. That is the proceedings of our meeting each day, show-
ing the different grievances that we adjusted between the
miners and operators.
Q. Can you tell me what those names are appearing in the long-
nd at the bottom of these typewritten pages?
A. Mr. George Richardson, representing the operators, and my-
f, representing the miners.
Q. Is that your signature there, Alexander Howat?
A. Yes, sir.
Q. And did you see the signature of George Richardson written
ere?
A. Yes, sir.
Q. In your presence?
A. Yes, sir.
Q. And that is the George Richardson, representing the operators?
A. Yes, sir.
Q. Now I notice on these sheets, caption, case No. 1086. Does
t cover the Mishmash case?
A. No; here is the Mishmash case here, 1085. They are brought
rotation. Sometimes we settle six, eight or ten grievances in a
, and then we proof read them to see if they are typewritten
rectly, and then sign them afterwards.

At this time the defendants introduce in evidence paper marked
xhibit I," being caption, case 1085, and all that follows under
t caption down to the caption, case 1086, on the first page of
ibit I, and the last page of exhibit I, which contains only the

following: "The joint board adjourned until 9:30 a. m., Wednesday May 8, 1917. And the signatures, Alexander Howat, chairman George Richardson, secretary."

No objection. (Exhibit I.)

Q. Now, Mr. Howat, I understood you to say that was in 1918 and for the purpose of refreshing your recollection I am going to ask you to look at the last page of exhibit I, and note particularly that date and let me know whether that case came up in 1917 or 1918.

A. Call Mr. McIlhurath up here a minute. The case was settled and I think I must have been mistaken. It was settled apparently on May 7 or 8, 1917. The reason I called Mr. McIlhurath, he is the board member that referred the case to me. It was May, 1917 when the case was settled.

Q. Now, Mr. Howat, was it a few months after that that further negotiations were had in regard to collecting the money due Mishmash?

A. After the case was settled and signed up there, or I might say when cases are settled up by the representatives of the miners and operators, the commissioner for the operators is supposed to notify the company involved to pay the amount of money due, whatever it may be, and we take it for granted they do that, and I notified the local union, and I heard nothing more of that for considerable length of time.

Q. That don't give the date that it was agreed among you that he was nineteen years of age?

A. We don't fix the date there. We say from the time he became nineteen years of age.

Q. Was the date there, and then fixed?

A. The date wasn't fixed by us. At the time we claimed a certain date when he became nineteen years years of age, and it appears the operators agreed with us, but we didn't write it in the decision when he became nineteen. It was generally understood that he was nineteen, and they took it for granted that he was nineteen at the time his mother said he was.

Q. When was he nineteen?

A. The boy was born on August 31, 1898, according to a sworn affidavit that I have from the boy's mother and two other parties that were there that know when he was born. The boy's own mother said that he was born August 31, 1898.

Q. After August 31, 1917, did you then proceed on the basis that he was nineteen?

A. After the decision was written out and agreed to, the company recognized the fact that this boy was nineteen years of age because from the time the case was settled they began paying him men's wages from that time on. But of course they didn't recognize it so as to go back and pay him the eight months' back money that was due him, but they recognized it to the extent that they began paying him men's wages from the time the settlement was made, but there was eight months' back money due this boy that

they failed to pay him; that would be the difference between $3.60 and $5 during that time.

Q. What was done since in regard to collecting this money?

A. Well, the case went on for considerable time before I knew it hadn't been paid, and I then took it up with the commissioner for the operators and told him that money hadn't been paid yet; and he said that was news to him, and he said he would get in touch with the operators right away; and I don't know whether he did or not, but when I checked him up again he said he had some evidence that the boy wasn't nineteen years of age when his mother said he was, and his mother was a dirty liar and they could prove she was a liar; and I told him if they could produce any evidence and prove the boy wasn't the age his mother said he was, that we didn't want a cent, even regardless of the decision that was written up; that if he had any evidence to show that his mother was a liar and didn't know when he was born we didn't want a cent; and he said then that Mr. Morton, or Martin, superintendent for the company, had received some information from Wichita, Kan.

Q. How long ago was that?

A. Oh, probably a year and a half ago—that Mr. Morton, superintendent for the company had some evidence at Wichita, Kan., he was going to get, and he would get it as soon as possible. Well, told him all right, to have Morton hurry up, as I didn't want to have this boy waiting a long time to get his money.

Q. Is the boy married?

A. No; the boy was living with his mother, his widowed mother, who has a large family of small children.

Q. Do you know if he is the sole support of that family?

A. Yes, sir, and is at the present time. His father is dead. The case went on for some time again, and I was away a good deal of the time in Washington and Indianapolis trying to make a contract, and the case slipped my mind for a good deal of the time; and then I called McIlhurath, who lived down in this county near this boy, and told him to see Mr. Morton and see if the company wouldn't pay that money, and every time he spoke to him he continued to put him off with the same old story; says we have evidence to show and prove this woman is a liar and she don't know the age of her own boy, and they was going to prove that to us, and so McIlhurath asked him how long it would be, and he said he would have it here soon; and of course I had no desire to call a strike if they had any evidence to show the boy wasn't of age, so I continued to wait in hopes they would produce the evidence. I didn't want to have any trouble if I could avoid it, so it was finally evident the company didn't propose to pay this woman the money that was due her, and so I took it up again with the representative of the operators, probably four months ago, and I told them again I would like them to pay this money, and they would have nothing to do with it; and so I told the board member to see Mr. Morton, the superintendent, and see if he wouldn't pay it, or produce the evidence to show us the woman was a liar in regard to the age of her own boy, and the information I received from the board member was that the superintendent merely laughed

at him and told him he would get this evidence sometime that we had been asking for, and I then took the matter up with the board members, and we adjourned for a couple of weeks or so, and then we took it up again, and they said, "Oh no, Alex, we have got the evidence; Morton knows this woman is a liar in regard to the age of this boy." "Well," I says, "George, I have been asking you for two years to produce this evidence."

Q. Who do you mean by George?

A. George Richardson. I says, "I have been waiting two years to get this evidence and you will have to admit I have been patient and I didn't want to hurry you, and I have tried to be fair, but I don't want to wait much longer in order to induce you people to pay this money to this boy and his mother, and I am going to make you this proposition in order to protect you and protect the coal company. You pay this boy the money that is due him, and" I says, "the district board will pledge that the United Mine Workers will at any time you can produce proof to show that this woman is a liar, that you say you can, for the last two years—any time you can produce proof no matter when it may be, that this woman is a liar, the district organization will refund to you, or the coal company, the amount of money you pay out." And when I made that proposition they just merely laughed at me, and they said, "Oh no, Alex.; Oh no, Alex." And that to me was an indication of our weakness in letting it drag too long until the records were destroyed or some of us died and they could get away with the money, so I told them that positively that was the last time I was going to take this question up with them. That is how far I went to try and get justice for this boy under the contract.

Q. That covered, you say, how long?

A. Well, it is about three years since the case was settled, and they kept saying all the time they was going to have this evidence and would get it pretty soon, and in order to try to be fair with them and not run into any trouble, if they could prove this we didn't want a cent, but at the end of all this time they have proved nothing.

Q. Have they up to this moment brought evidence to you to show that this woman was incorrect?

A. No.

Q. Have they brought any evidence whatever to show that Kasmir Mishmash was mistaken as to his age?

A. No; but I will tell you what they did do. Mr. Morton, the superintendent of this company, after the decision was written up and the case settled, he sneaked down to this woman's house, and the woman at that time wasn't aware that the case had been settled, he sneaked down to her house unbeknown to any one and asked her if she had any evidence or Bible or anything to show when this boy was born. Of course she didn't have to show him any evidence, but she handed him this Bible. Then it was this case was settled. He was figuring then on some plan to get out of paying this money that he had said wasn't due this boy and he wasn't going to pay; and she handed him the Bible which I have in my office, and in the front part of the book, the Bible, the ages are written there with lead pen-

cil, written there—Karl Mismash, born August 31, 1898; next, March, 1900; next, 1902; next one, 1904; then there is three or four other children born after that.

Q. Do you know the entries above that—or is Karl the oldest?

A. He is the oldest. Karl was born August 31, 1898. The next one was born March 28, 1900. Now, Mr. Morton then took and looked through this Bible, and here he found in the back part of this Bible the ages was stamped again. In the front part of the Bible it was written with a lead pencil and it was getting pretty well rubbed out, so that the mother of the children had taken a stamp and stamped the ages in the back of the book, back part of the Bible, and in stamping the ages in the back part of the Bible she had stamped Karl Mishmash, and she has stamped there 1899. Then you will see the rest of the children just the same as the front
27 part, and the evidence will show in the front part that that is a mistake in the back part, but that is what the operators are going on. When Mr. Morton saw the stamp in the back part he says, here is where I get a chance to beat this woman out of $225 coming to the boy, so, he says, I am going to believe this is the boy's age. He said I don't believe——

Q. Said that to the boy's mother?

A. Yes, sir. Said that to the board member McIlhrath and the board members of the coal operators; they believe the same thing. They don't believe he was born in 1898. They believe he was born in 1899, because by believing that, that lets them out of paying $225 due the boy.

Q. You mean they say they believe that?

A. They don't believe it, but they say they do, because by saying they believe that, and if they can convince me to believe that, they save $225. Now to show you that they don't believe what they say they do, the Bible itself will show again that if Karl was born August 31, 1899, then all the other ages are stamped just the same in the back as they are written in the front; it will show in the back part of the Bible, Karl Mishmash, August 31, 1899, which the woman says is a mistake, and the affidavit of two other men; then Mary, March 28, 1900, which would make six months and twenty-seven days between the ages of the two children, if what they contend is correct. The Bible itself, even conceding that Karl was born August 31, 1899, Mary, it shows, was born March 28, 1900, which makes six months and twenty-seven days between the ages of the two children, which some doctors I have questioned state is an impossibility.

Q. What does the mother say?

A. I have a sworn affidavit from the mother and also from two other parties showing the boy was born August 31, 1898, and she is willing to go into any court in America and swear to when he was born.

Q. You mean Karl?

A. Yes, sir. And I have a statement from her saying the stamping the age of Karl in the back of the Bible was a mistake abso-

lutely, and she didn't know anything about it until it was called to her attention by Mr. Morton.

Q. Did they bring that up to you in the board meeting?

A. The last time we had the question up they said that Mr. Morton said the Bible showed the woman was a liar.

Q. Did they give that evidence before?

A. No; they hadn't given that before. They did the last time. They said the superintendent, Mr. Morton, had seen the Bible and it showed the mother was a liar. That is when I agreed that if they paid this money and they proved the woman was a liar the district would refund the money.

Q. Did they see the affidavit of the mother?

A. Yes, sir; they seen that. Mr. Mackelraith showed it to Richardson and showed it to Mr. Morton long, long ago.

28 Q. After this last meeting where you told them you wouldn't wait any longer, what was done?

A. They said that was up to me.

Q. Then what was done after that?

A. Then I could see clearly that what I had believed for some considerable time was true—that the object this company had in view was to beat this woman out of her money; and I called the board together and recommended that a strike be called at the mines of this company until such time as this company complied with the contract and carried out the agreement that had been made in the Mishmash matter between the representatives of the company and the miners and until such time as they gave justice to this boy in this case.

Q. Was this done in conformity with your constitution?

A. Yes, sir.

Q. Both district and international?

A. Yes, sir.

Q. Subject to that recommendation, what was done?

A. The motion was carried to call a strike at these two mines until such time as they carried out the decision and respected the rights of our members and gave justice to this boy.

Q. When that was discussed at the meeting was anything said there about hindering production of coal in Cherokee and Crawford county, or anywhere else?

A. No; that question wasn't even considered, because of the fact that coal operators at deep mines and strip pits was down at the present time.

Q. I mean at that time.

A. Yes, sir; and they want to shut down some more right now. Some of the coal operators have told me themselves they would like to shut some more down.

Q. Prior to the calling of the board together to make your recommendation in this Mishmash case that a strike be called, what was the condition then as to whether or not some of the mines were shut down in Cherokee and Crawford counties?

The state objects for the reason it is incompetent, irrelevant and immaterial; which objection is overruled, and state excepts.

A. The condition was that many of the mines in the district was working as much as one day in two weeks.

Q. You mean to apply that to Cherokee and Crawford counties, State of Kansas?

A. Yes, sir. Some of the mines hadn't worked for as much as six weeks, and a few of them had shut down altogether.

Q. Now were any of those mines located near the mines of the Mackie Fuel Company known as mine J and mine H?

The state objects to the question for the reason it is not the best evidence and calls for the opinion and conclusion of the witness; which objection is overruled.

A. Some of the mines down in that vicinity there where these mines is shut down is making about something like one day in two weeks—one day in a week and one day in two weeks.

Q. Was that the condition on the day you called the board together to call the strike in the Mackie Fuel Company?

A. That condition has prevailed in the district for the past three months, on account of the mild winter that has been all over the country.

Q. Do you really know the reason why they are shut down?

A. Well, it has been a very mild winter and there isn't orders for coal. People don't burn very much coal unless they have to, because it costs a whole lot of money nowadays.

The state objects to answer of witness and moves the court to strike same from record, for the reason it is purely hearsay; which motion is by the court denied.

Q. Was there anything said at the time about preventing these men from working elsewhere if they could get work?

A. No; we would be very glad to have them work some place else.

Q. At the meeting of the district board—the meeting you referred to in your previous answer as the one you recommended a strike?

A. We would be more than glad to have them work in other mines, but judging from experience of the past, which we know to be true, that the coal operators have issued orders telling them not to employ any men. That has been the past custom when there has been as many as 1,800 miners out of work—the coal operators issued orders not to employ any men. It didn't make any difference how bad they needed men or how bad they needed coal, you couldn't get a job.

Q. You have made no effort to send these men to other mines to work?

A. No. If the operators will give them work there isn't any doubt but what they will go to work in two or three days.

Q. You haven't had any request?

A. No, sir.

Q. You are not anticipating anything of that kind?

A. I am not anticipating anything of that kind. If they do I will be very much surprised.

Q. Had this Mishmash case been discussed at previous board meetings?

A. Yes, sir.

Q. Did those members who were then present become familiar with it during the three years previous?

A. Yes, sir; they knew about the case.

Q. Now was anything else considered by you or said by you or the men present with regard to confederating together to stop production or delay or hinder production of coal in Cherokee or Crawford county?

A. No, sir; we had no thought of that kind in mind.

Q. Anything said of that kind to you?

A. No, sir. The only thing we had in mind was to compel this company who had demonstrated through inferences and shown their disrespect of the decision of their own man. The only thing we had in mind was to make them give justice to this boy. The company we was going to call on strike was absolutely insignificant when you take into consideration the whole district. Their output is about 300 tons a day, while the output in the district is something about 35,000 tons a day, and the output of these mines was insignificant because they were shut down all over the district, and if those mines never worked the other mines over the district will be working one and two days a month.

Q. Now did you and August Dorchy and Titus, or any of you meet elsewhere and give any consideration or make any remark tending towards hindering, delaying or stopping the production of coal in Cherokee or Crawford county, state of Kansas?

A. No, sir; we had no thought in mind of violating any injunction. We didn't anticipate that the injunction was meant to tie men up and make them work under any and all circumstances. Our understanding was it eliminated the possibility of a strike during the winter months when it would work a hardship on the people, as it was called a year ago. Our understanding was that it was intended for something like that; that it wasn't intended to tie men down under any and all circumstances whether they got their pay or not. That was the thought. We had no thought of violating the injunction. The only thought we had was to compel this company to deal out justice to this boy.

Q. In the case of that general strike you referred to, you were enjoined by Judge Anderson of the United States court in Indianapolis, were you not?

A. Yes, sir.

Q. Does that injunction prevent you from calling any general strike here?

To which the state objects, for the reason it is not the best evidence; which objection is overruled, and plaintiff excepts.

A. Well, I don't know that it does, I don't know that it does positively. It would be hard or difficult for me to say just exactly what

Judge Anderson meant in Indianapolis there; but of course there is a possibility that he did mean to prohibit strikes in the future, or while the Lever act is in effect, and I think that Lever law is still in effect, because the peace treaty hasn't been signed yet by the United States.

Q. That was a permanent injunction?

A. Yes, sir; understood to be until the Lever law went out of existence.

Q. You were in court there and were permanently enjoined?

A. Yes, sir; under ten-thousand-dollar bond.

Q. Are you still under ten-thousand-dollar bond in connection with that proceeding before Judge Anderson?

A. Still under ten-thousand-dollar bond on that question.

31 Cross-examination.

By F. S. Jackson.

Q. Mr. Howat, what did you say is the amount in controversy between this young Mr. Mishmash and the mine owners? What does it amount to?

A. Well, I think the amount is, roughly estimated, something like $225.

Q. $225?

A. That isn't definite, you understand, but something like that.

Q. That was for wages which would have accumulated between what dates?

A. That was for wages that accumulated from August 31, 1917, until May 1918. I think that is correct; anyway there was something like eight months' back pay.

Q. Then it is you runderstanding that since that time they have been paying him more?

A. After the case was settled they began paying him men's wages. They recognized the decision that far. They began paying him then men's wages; but this decision said he was to receive the $5 rate from the time he became nineteen, so he had about eight months and seven days' back money coming to him; the difference between $5 and $3.60, which was the rate of wages for men at that time.

Q. Was it your understanding that this settlement was had before he really became nineteen?

A. No, sir; he became nineteen years of age in the month of August, 1917.

Q. 1917?

A. I think it was 1917, and the case was settled in May of the following year, 1918. At any rate, whether I have the year correct or not, the case was settled about eight months and seven days after he became nineteen years of age.

Q. The record you read here seemed o fix the date of the settlement as May, 1917. You see, that would be three months before he became nineteen, according to your memory of the date of his birth. The record you read here showed the settlement signed up

by yourself and Mr. Richardson dated in May, 1917. It is t
you said first you thought it was 1918?

A. Yes, sir.

Q. But it seems on that record it is 1917, so it seems to b
little mixed up there and I wondered if you could straighten it o

A. I don't know whether I could or not. All I know is the b
was born August 31, 1898, and the case was settled after he beca
nineteen years of age and there was eight months and seven da
back pay due him. The operators recognized he was nineteen a
paid him from that time, but they failed to pay him the back mon
That is what finally caused the trouble.

Q. Well, this question has been open, then, ever since that ti
between your organizations, or the organization represented by y
and the operators, represented by Mr. Richardson?

A. It has been taken up and discussed at our meetings at dif
ent times. Mr. Richardson has always taken up other gri
332 ances continually, and I would bring this matter up ag
and ask him if they got the evidence yet, and they would
no, they would have the evidence before long, and I continued
believe them until I finally concluded they were only jok
about it.

Q. Your organization has an attorney for your men and they
gage quite extensively in cases in court?

A. Our attorney takes up compensation cases for our men un
the compensation law.

Q. Won't they take up cases for wages too?

A. No, our contract covers that. Compensation is a state l
but the wages comes under a contract and he doesn't interfere
that at all. We have a provision in our contract between the mi
and operators that shows how those grievances are adjusted,
when they are settled both sides are supposed to carry them
and, in fact, I might say this for your information—which fa
to carry out the decision should be put out of Operators' Associa
for failure to carry out the agreement, but by hiding behind
junctions and the industrial court they are keeping them in th

Q. Have you filed an application to have him put out?

A. No; that isn't our business. They have always done tha
the past without us asking, because that was their business,
putting a man out of our organization is our business.

Q. It would be proper to suggest to Mr. Richardson.

A. I don't know. He might think I was interfering with
business if I told him.

Q. But you think it is proper to make that statement here?

A. I think it is proper to make it at any time. If he would
me to put some man out of our union that would be a question
us, and I would tell him for him not to interfere with it at all.

Q. You knew all about this controversy with the Mishmash
last spring?

A. Oh, yes, I know about it from the beginning.

Q. Knew of it in April, 1920?

A. Knew of it all the time. Of course I didn't have it in

mind all the time. I had a good many other things to think about, but every now and then I thought of it and I would suggest it to them, and they put me off with the same old story every time.

Q. Well, you were subpoenaed last spring to tell about any grievances you might have, or any troubles in the mining district before the Court of Industrial Relations?

A. Well, I don't know if I was subpoenaed here to tell about any grievances we had; but I understood the industrial court wanted some information in regard to the mining business.

Q. You knew that under that subpoena issued for you, that then would have been a proper time, or would have been a proper case for you to have suggested that an injustice was being done this boy and his widowed mother by a big coal company?

A. No; at that time, Mr. Jackson, still I had faith and believed that the company intended to play the game fair, but finally, later on, I became convinced that they were only trying to hoodwink me and put us off until some of us died and was forgotten; but at the time you are speaking about I thought the company would pay it or produce evidence that the woman had lied.

Q. Well, didn't it occur to you that that would be a good place to compel them to come in and testify and show whether or not that woman was telling the truth?

A. No; I believed at that time they had the evidence they talked about, or probably had it. That was one of the reasons I didn't call a strike sooner. I didn't want to call a strike and get in the hole. I wanted to wait and get the evidence, and I believed at that time they would produce the evidence or pay the money.

Q. It would have — better to get it settled; to get them in here before some officer?

A. No; at that time I had full faith that they would pay the money or show us the woman wasn't correct, and for that reason I didn't think it was necessary to bring it up.

Q. But the Court of Industrial Relations was asking you to come in and give any information you had?

A. I had no grievance at that time. The case was settled and I absolutely believed they would pay the money or show us some evidence.

Q. But you knew later they didn't have the evidence or hadn't paid the money?

A. Yes, sir; the last few weeks. On the day I made the offer I told them the district would refund the money to them or the Operators' Association, if at any time they could furnish proof that the woman had lied; and then they laughed at me and says, "Oh, no, Alex.; oh, no, Alex.." I was convinced then they had been talking about it and never intended to pay it.

Q. It never occurred to you at that time that you could take it before the Court of Industrial Relations and have it settled?

A. No; I didn't believe even that the industrial court had authority to make them pay that money. I didn't believe that the industrial court was a constitutional body; that the law wasn't constitu-

tional, and I didn't believe they could make them pay that money.

Q. That was the reason you refused to testify?

A. Yes, sir; that was one of the reasons.

Q. But you know that the district court was a constitutional court?

A. Well, I think it is, yes, sir.

Q. Well, don't you know that if this boy had a claim for wages under a contract that you could recover it in court?

A. No, I didn't know it. We never have settled any cases that way.

Q. Didn't you know that the laborer is a favored suitor in

31 the courts?

A. Well, I never have found that very much to be true. I haven't seen very much in the courts and the legislators to encourage me in regard to labor, because, as you asked me there, so far as I could see labor is getting the worst of it. One of the greatest fights in America is on at this time. The lawmakers and the big corporations are joined hand in hand to crush the life out of the laboring man.

Q. You think the boy couldn't collect the money in the courts?

A. I couldn't say whether he could or not. I never tried it, and anyway, we have a contract which provides for it and we wasn't obliged to go to court.

Q. Does your contract provide that you can call a strike?

A. It isn't written there, but it is provided for by our international board, and has been for years, that when we take grievances up to the final end, which is the contract, that has been interpreted time and again, that when you take grievances up to the end of your contract, in accordance with your contract, then you can call a strike if you desire.

Q. Doesn't your contract say that you may then appeal to the courts?

A. No, no; doesn't say a word about it.

Q. You are sure about that?

A. Absolutely positive.

Q. You claim then the law can't interfere with that right?

A. There is nothing in the contract that says the court will have anything to do with it. I haven't read all the laws you have in Kansas, but there is nothing in the contract that contemplates anything of that kind. In other words, when we make a settlement with the representatives of the operators we expect them to carry it out, and when we make a settlement and they don't carry it out they may expect a strike.

Q. You don't go into court?

A. No, sir; neither here nor in the other districts.

Q. Would you permit a miner to sue for his wages under a contract which the employer refuses to pay?

A. Well, it would be left to the man himself. I don't suppose I would bother my head about it.

Q. You wouldn't protect the miner, then, in a question of his wages in court?

A. Well, I don't think I would, not if he would ignore the con-act. He is a member of our union and he is expected to take up s grievances the same as all other men.

Q. You don't think the contract is any stronger than the law of is state?

A. I don't know as I ever tested that; don't think I did. But we ve a contract and I expect them to respect the contract that is ade for every man in the district, and none of them are supposed dodge it. Now, if one has a grievance and refuses to take it up ording to the contract, then if he wants to go into court that is to him.

Q. He must exhaust the course and paths of the union first?

A. He is supposed to take up his grievances according to the contract and according to the constitution, like all other men, and if he fails to get justice he is supposed to take it with our office.

Q. When you had this matter of a strike up you say you didn't nsider whether is was a violation of this order?

A. I say we didn't contemplate or think for a moment that it uld be a violation of the injunction, because we didn't believe at the injunction contemplated to tie a man up and compel them to rk under all circumstances whether they was paid by a man or t. We thought it didn't reach that far. Our understanding was at it was to eliminate the possibility of a general strike like we d last winter.

Q. You knew it forbid the calling of a strike?

A. In other words, we didn't believe that when Judge Curran ued that order that he intended for us to work under any and circumstances.

Q. You didn't read the injunction?

A. No; never did.

Q. You didn't ask your attorney what it said?

A. No. My understanding about it, from what I heard of it—l of course I probably was wrong from the action you men have en here—but my understanding and our understanding was that as intended to eliminate the possibility of a general strike like had last winter, but wasn't intended to tie us up under all cumstances, so that those men could impose any injustice on us l we would still have to work under those circumstances. We n't understand it that way. We didn't understand that that unction was interfering with us fighting to compel the operators deal out justice.

Q. It is true, isn't it, that you didn't consider very much at all?

A. We didn't think for a moment it was a violation of the in-ction. One reason was because we didn't believe it was intended stand in the way of justice, and another reason the operators has es shut down in the district, while other mines are working two three days a week.

Q. You didn't understand that the action of the operators re-ed you in any manner?

A. No. But I say we didn't consider we was doing a wrong when

we was trying to compel one of these greedy corporations to deal out justice to a widow woman.

Q. Did you consider it at all?

A. Yes, sir; we considered it would be a crime if we let this case go any longer. We considered it would be a crime if we didn't call a strike to compel this company to give justice to a member of our union.

Q. You wouldn't have considered it a crime to bring suit to compel them to pay this boy?

A. We have no right under our contract to compel them to pay wages after a case has been settled.

Q. You would have the right to have the boy do it?

A. No, sir; it is our duty to close the mines of that company to compel them and make them deal out justice.

Q. Just about how much would your men lose?

A. It isn't a question of the amount. It is a question of right and wrong—a question of principle.

Q. I wanted you to tell me about how much they would lose?

A. I don't know, and I don't know how much the coal company would lose. I know the coal company and the press every time there is a strike make a good deal of noise about the amount of money the men lose.

Q. Don't the men lose more than the employer?

A. About all the workers get out of this world is a bare living and that is all they can get any way. Let me say this—that the question of amount lost is not the question we consider, Mr. Jackson. The question we consider is the question of justice. That is what the Americans considered when they went to war a few years ago. It wasn't the amount of money they was going to spend or the amount of lives that were going to be lost. It was a question of justice. And that is what we are doing in this case.

Q. You believe, do you not, that war and strikes ought to be the last resort?

A. It was only the last resort that we went to war with this coal company.

Q. It would have been a matter of last resort, if in order to save this boy a couple of hundred dollars you could bring a suit in Judge Curran's court and recover that; but instead of that you cause a loss of thousands and thousands of dollars to your workmen?

A. Yes, sir. America didn't consider the billions of dollars and the thousands of lives they was going to give up to fight over in France. It was a question of justice and not cost. It doesn't make any difference how much it costs; we are going to fight for justice because we have a right to do that.

Q. If you could get justice without going to war, wouldn't you think it a good thing to do?

A. When we go to the end of our contract we feel that we went all the way.

Q. In this case the amount was only $225?

A. It wouldn't make any difference if it was only $5. We would call a strike as quick for $5 as if the amount was $1,000.

Q. Don't you think you could get justice in the courts?

To which defendants object, for the reason it is calling for the inion and conclusion of the witness, and is incompetent, irrelevant d immaterial; which objection is overruled, and defendants ex-pted and except.

A. Well, I can tell better after I get sentence passed upon me, I ppose. I haven't any reason to believe that Judge Curran is going to give me the worst of it. Let me make this clear to you: We don't propose to go into court to bring suit to compel these coal operators to give justice to our members. We are going do like they do in other districts.

Q. Well, do you think you could have gotten justice for Mish-sh in this court?

To which defendants object, for the reason it is incompetent, relevant and immaterial, not done for the purpose of proving or sproving any issue in this case; which objection is overruled, and fendants duly excepted and except.

A. That is something I can't say. I don't know anything about As I said before, that I had no reason to believe that Judge rran was going to do any injustice at this time; but I say that in ing for wages in courts we don't do that and never have; not ly here, but they don't do it in any other district.

Q. You don't recognize courts in the matter of settlement for ages?

A. No, sir; we have a contract that covers that.

Q. You will not do it?

A. I don't think so. We will take it up according to our con-act. When we quit making contracts we might try something e that, but when we have a contract we want it complied with.

Q. You don't recognize that contracts are made to be enforced courts, then?

A. No, sir.

Q. You say you didn't consider whether your action in calling is strike would be a violation of Judge Curran's order or not?

A. Yes, sir; we considered it. We considered it would be no olation.

Q. Mr. Harvey objected to it in that meeting on the ground that ould be a violation of that order?

A. Not in them words, and Mr. Harvey can testify on that.

Q. You said the other day he didn't vote for this order?

A. I said he was opposed to it, but I didn't say what for.

Q. You don't know why he was opposed to it?

A. No; I don't. Mr. Harvey can answer that. He said he s opposed to it.

Q. You didn't understand that the laws of the state of Kansas cluded the industrial-court law as decided by Judge Curran and e supreme court?

A. No; and I will say that I considered from the beginning that e industrial court was unconstitutional and had no authority to

prohibit strikes; that no man should be chained to his work like a slave.

Q. The fact that Judge Curran had passed on it in granting the injunction against you in the case in which you refused to testify before the industrial court—I say, the fact that both of those courts had passed upon the law and held it to be constitutional didn't convince you?

A. No, sir; I am not convinced yet that the law is constitutional. I may be convinced later on, but I am not convinced yet.

Q. Will you obey the law then?

A. Well, I will meet that when I come to it, Mr. Jackson.

38 Q. That fact didn't make it of importance to you to obey this order of the court?

A. No. I gave you my reason already for not thinking the injunction interfered with this strike in any way, and my reason for not taking the industrial court very seriously was because I don't believe it is constitutional and don't believe a law in any country is constitutional that chains a man to his work like a slave.

Q. Did you read the law?

A. Yes, sir.

Q. You read the law, but didn't read the court's injunction based on it?

A. No, sir.

Redirect examination.

By R. S. Brennan:

Q. You were present in this court room on Monday and also on Tuesday of this month, February 7 and 8?

A. Yes, sir; I think I was here then.

Q. State, please, whether you were present with counsel on either of those days?

A. I was here. James Callery came down here at my request. I requested him to come down here and ask for a continuance until Mr. Phil Callery, our chief counsel, got in here, because we expected him to arrive on the two-o'clock train, as was stated by Mr. Jim Callery himself, and we took a thirty minutes' recess.

Q. Did you have him appear for any other purpose than to have him get a delay?

A. No purpose only to ask for a continuance for us until Mr. Phil Callery could get here. We don't consult or advise with Jim in any way. He knew nothing about it and wasn't in position to discuss or advise with us in any way. Neither was Phil Callery when he came into court, and that is the reason he asked for a continuance for one week.

Recross-examination.

By F. S. Jackson:

Q. While you were conducting these negotiations with the mine company here last summer to get this settled, you knew about the

ie time that the Joplin & Pittsburg employees were presenting
ns before the Court of Industrial Relations and getting increase
vages and submitting matters of contract?

A. Yes, sir. I spoke to some of the boys about it and they told
they had considerable back money due them and they told me
court said they had no authority to compel the company to
it.

Q. But, based on that order of the court, they brought a suit in
other courts to collect it, have they not?

A. I couldn't say about that.

Q. Well, didn't you know that at that time, after your union
ds had made a settlement with the mining company, or had
ed to come to a settlement, that as a last resort you could present
to the Court of Industrial Relations instead of calling a
strike.

A. Well, I didn't think the industrial court had any
authority to pay back money, because the street-car man
me they said they didn't have authority to make them pay
money.

. But it could make an order upon which a suit was based?

. Well, I understand you didn't have authority to compel them
ay it?

Was that the reason you didn't bring it into the industrial
t?

. Well, I don't know as that was the reason. The case was
ed and there wasn't anything for us or anybody else to settle.
only thing for us to do was to make them carry out their agree-
t. The case was already settled.

Redirect examination.

By R. S. Brennan:

Do you know whether or not it is a fact that the case before
ndustrial court that Mr. Jackson referred to, the street-car case,
tried here and then went to the Federal court and is now in the
ral court?

That is my understanding.

Not tried here—removed?

I understand it is in the Federal court at the present time.

So, in other words, it was not tried here, but was removed to
Federal court?

It is referred to the Federal court.

Do you think you could take the Mishmash case, then, through
procedure for $225?

No, sir.

Have you got any authority to spend the money of your organ-
n to collect the money for any one else?

It never was contemplated. I might say for your informa-
Mr. Hopkins, or Mr. Jackson, that it was never so contemplated
e officials or the miners themselves, where they took a grievance

up and settled it, that then they would have to go into any co in the country. When the case was settled it was settled.

Recross-examination.

By F. S. Jackson:

Q. You did, however, agree to pay this money if the boy w not of age?

A. Yes, sir. I told the company that it was nothing more th right and just if we obtained that money by any fraudulent mea by anybody lying, and we owed it to them, and so I told them would refund the money at any time.

Q. That was entirely within the rights of the officers of the unio

A. Yes, sir; we had a right. The United Mine Workers do want to beat a man out of his money. They don't want him to money from a man unless it is justly due, and if they get mon and it isn't justly due them we give it back.

Q. But you wouldn't help the miners in a court if the compa owed them money and wouldn't pay?

A. No; not if he violated the constitution—but that is this case. This case was taken up and settled in accorda with the laws of our organization and according to the l of the coal commissioners, and all they have to do is to pay money; but they think they can get out of paying it by hid behind the Court of Industrial Relations.

Q. Why do you say they are hiding behind the industrial co

A. Because they think we are tied up now and can't call a st any more, and if they don't pay this and we call a strike we will put in jail.

Q. You knew that before you called the strike?

A. Yes, sir. I knew the operators were hiding behind the dustrial court; that they was taking advantage of those things trying to get out of paying.

Q. And you knew you were liable to get in jail?

A. Well, I couldn't hardly think, here in America—talking ab free America and where hundreds and thousands of young Am cans gave up their lives in order that we might have freedom couldn't believe here in a country where they talk so much ab free America that it could be possible that any man or any c would arrest a man because they stopped a small bunch of from work to make a greedy coal company pay this money wh is due this poor woman. (Cheers by the audience.)

By Mr. Howat: I would like to ask the audience to refrain f anything like that.

Q. Your idea, then, of what the men died for in France was right to violate the law?

A. No, sir; my idea was that they died over there fighting justice for all people.

Q. Your idea of justice is that they have the right to violate the law?

A. No, sir; the right to fight to get justice.

Q. You are claiming now the right to violate the law?

A. No, sir. I said I didn't believe that any law here in free America we talk so much about, that it would be possible for any law or any court to put a man in jail because he stopped a handful of men from working in order to keep a greedy corporation from beating this boy out of his money that was justly due him.

Q. We understand that; but doesn't it come to this—that you are claiming that freedom rests upon the right to violate law?

A. No, sir; the right to fight for justice.

Q. The right of justice, as you understand it, depends upon the right to violate the law the people make?

A. No, sir. I don't believe the law is constitutional at all, and I don't believe any law can stand in this country, where we believe in freedom and justice, that would chain a man to his work under any circumstances.

Q. The fact that the state court, the supreme court of the state, the highest court under the constitution, organized by the constitution, has said that the law is constitutional doesn't make any difference in your opinion as to its constitutionality?

A. The United States supreme court hasn't said that yet.

Q. Mr. Howat, the members of the district board that you named here, the other defendants—you heard the testimony of Mrs. Burns and the reporter?

A. Yes, sir.

Q. They did vote for this strike as you said they did?

A. Yes, sir.

All parties rest.

The foregoing is a true and correct counter abstract of the pleadings, proceedings, judgments and testimony given on the trial of this case in the court below, and not included in appellants' abstract.

RICHARD J. HOPKINS,
Attorney-General;
JOHN G. EGAN,
Assistant Attorney-General;
BAXTER D. McCLAIN,
Attorney, Court of Industrial Relations;
C. A. BURNETT,
County Attorney of Crawford County, Kansas,
Attorneys for Appellee.

Be it further remembered, That afterwards on the 6th day of May, 1921, the same being one of the regular judicial days of the January, 1921, Term of the Supreme Court of the State of Kansas, said court being in session in its court room in the city of Topeka; the following proceedings among others was had, and remains of record in the words and figures as follows, to wit:

20 In the Supreme Court of the State of Kansas, Friday, Ma
6, 1921.

No. 23505.

STATE OF KANSAS ex Rel., Appellee,

v.

ALEXANDER HOWAT et al., Appellants.

Journal Entry of Submission.

This cause comes on to be heard on the appeal papers and abstra
of the record from the district court of Crawford county; and ther
upon after oral argument by Richard J. Hopkins, Atty. Gen.,
Dumont Smith, and J. G. Egan for the appellee, and by T.
McCormack and R. S. Brennan for the appellants, said cause
submitted on brief and abstract of the appellant and taken und
advisement by the court. It is further ordered that the appell
be permitted to file its counter abstract and brief within a few day

21 Be it further remembered, That afterwards and on the 11t
day of June, 1921, the same being one of the regular judici
days of the January, 1921, Term of the Supreme Court of the Stat
Kansas, said court being in session in its court room in the Ci
of Topeka; the following proceedings among others was had, an
remains of record in the words and figures as follows, to wit:

22 In the Supreme Court of the State of Kansas, Saturday, Jun
11, 1921.

No. 23505.

STATE OF KANSAS ex Rel., Appellee,

v.

ALEXANDER HOWAT et al., Appellants.

Journal Entry of Judgment.

This cause comes on for decision, and thereupon it is ordered an
adjudged that the judgment of the court below be affirmed. It
further ordered that the appellants pay the costs of this case in th
court taxed at $—, and hereof let execution issue.

23 Be it further remembered, That on the 11th day of Jun
1921, there was filed in the office of the Clerk of the Supre
Court of the State of Kansas, the Written Opinion of the cou
with the syllabus attached thereto, which opinion and syllabus a
in the words and figures as follows, to wit:

21 *Decision of the Supreme Court of Kansas.*

No. 23505.

THE STATE ex Rel. RICHARD J. HOPKINS, as Attorney-General, et al., Appellee,

vs.

ALEXANDER HOWAT et al., Appellants.

Appeal from Crawford County.

Affirmed.

Decided June 11, 1921.

1-3 No. 23505.

THE STATE ex Rel. RICHARD J. HOPKINS, as Attorney-General, et al., Appellee,

v.

ALEXANDER HOWAT et al., Appellants.

Syllabus by the Court.

Constitutional Law—Act Creating Court of Industrial Relations—Labor Strike Threatened by Defendants—Injunction Properly Granted—Injunction Violated by Defendants—Act Constitutional—Defendants Properly Punished for Contempt. The defendants, as officers and members of the district board of District No. 14, United Mine workers of America, were about to call a strike of miners and mine workers in that district, which comprises the coal-producing counties of Kansas. The strike, if called, would prevent the carrying on of business, commerce, occupations, and work in the state, would stop production, manufacture and transportation of necessaries of life, would inhibit domestic and household activities of the people, would affect the public peace and the public health, would cut off the supply of fuel for the state's educational, penal, charitable, and other institutions, and would otherwise inflict on the public irreparable injury, for which there was no redress. One object of the strike was to defeat the purposes of chapter 29 of the Laws of 1920, creating a tribunal known as the court of industrial relations, to regulate certain industries, including that of coal mining. In an action brought by the state, the defendants were enjoined from calling a strike. Afterwards they violated the injunction, were proceeded against for contempt of court for violating the injunction, and were found guilty, after a trial

before the court, without a jury. The conduct of the defendants in calling the strike was punishable as a felony under the statute referred to. Held:

1. The state was authorized to apply for, and the court was authorized to grant, the injunction, to avert threatened public calamities, irrespective of the state's ownership of property affected, and without the aid of a statute.

2. The injunction order was not forbidden by section 7149 of the General Statutes of 1915, relating to granting injunctions in specified cases of industrial disputes.

3. The injunction order was not invalid as an attempt to enjoin the commission of crime.

4. The defendants were not entitled, in the contempt proceeding, to a trial by jury.

5. The contempt proceeding was otherwise free from irregularity.

6. The act creating the court of industrial relations is not void under the constitution of this state because of duality of subject, or defect of title, or because it commingles functions of separate departments of government, or because it attempts to enlarge the original jurisdiction of this court.

7. The business of producing coal in this state bears an intimate relation to the public peace, health, and welfare, is affected with a public interest, and may be regulated, to the end that reasonable continuity and efficiency of production may be maintained.

8. The act creating the court of industrial relations is a reasonable and valid exercise of the police power of the state over the business of producing coal, and does not impair liberty of contract or permit involuntary servitude, contrary to the constitution of the United States.

Appeal from Crawford District Court.

Andrew J. Curran, Judge.

Opinion Filed June 11, 1921.

Affirmed.

Phil H. Callery, of Pittsburg, Redmond S. Brennan, and Thurman L. McCormick, both of Kansas City, Mo., for the appellants.

Richard J. Hopkins, attorney-general, John G. Egan, assistant attorney-general, Baxter D. McClain, attorney, court of industrial relations, C. A. Burnett, county attorney, and F. S. Jackson, of Topeka, for the appellees.

The opinion of the court was delivered by

BRETH, *J.*:

Alexander Howat and others were adjudged guilty of contempt of the district court, and appeal.

At a special meeting of the legislature held in January, 1920, an act was passed declaring that the manufacture or preparation of food products, the manufacture of clothing, the mining or production of fuel, and the transportation of food, clothing, and fuel, are industries affected with a public interest; that reasonable continuity and efficiency in the operation of such industries affect the living conditions of the people; and that consequently such industries are subject to state supervision, for the purpose of preserving the public peace, protecting the public health, preventing industrial strife, disorder, and waste, and promoting the general welfare. A supervising body was created, called the court of industrial relations. Persons, firms, corporations and associations were forbidden willfully to hinder, delay, limit or suspend continuous and efficient operation of the supervised industries, contrary to the act or for the purpose of evading any of its provisions. The right of any individual worker to quit his employment at any time was expressly recognized; but conspiracy and confederation with others, and inducement and intimidation of others, with intent to cause suspension of operation of supervised industries, or to limit their output, was declared unlawful. The court of industrial relations was given authority to investigate, adjust, settle and determine controversies between employers and workers, or between groups or crafts of workers, which might endanger continuity or efficiency of service of supervised industries, affect production or transportation of the necessaries of life referred to, produce industrial strife, disorder, or waste, or threaten the public health, peace, or welfare. Willful violation of provisions of the act was made punishable as a misdemeanor. Officers of corporations and officers of labor unions and associations who willfully use their power and authority to influence, impel or compel any other person to violate the act, were declared guilty of felony, and punishable accordingly. The full text of the statute, chapter 29 of the Laws of 1920, is appended to this opinion.

The United Mine Workers of America is a voluntary association of miners and workers in mines, organized as a labor union, for the purpose of furthering the interests of members in the United States. District No. 14 of the United Mine Workers of America includes the counties of Crawford, Cherokee, and Osage, in which the bulk of the coal mined in Kansas is produced. In April, 1920, the officers of District No. 14 were: President, Alexander Howat; vice president, August Dorchy; secretary-treasurer, Thomas Harvey; all of Pittsburg, Kan. Memmbers of the board of directors or trustees were James McIlwrath, John Fleming, William Jenkins, Amos Standerling, and John Billings. Willard Titus had been elected as successor to William Jenkins. Thomas Cunningham was a traveling editor and agent. On April 5, 1920, the attorney-general com-

menced an action on behalf of the state against the associations and persons named and other persons who were stated to be officers and members of local unions of District No. 14, to enjoin them from interfering with the operation of coal mines in the counties named and causing the production of coal to be delayed, hindered, and stopped.

The petition alleged that the defendants were conspiring and confederating among themselves and with others to violate the act creating the court of industrial relations. The defendant, Howat,
6 had publicly announced that he proposed to fight the statute with a force of 12,000 miners in Kansas, regardless of consequences, and the miners had pledged him their support, to the end that the force and effect of the statute might be nullified. The conspiracy was to be executed by calling a general strike of mine workers in the mines in Kansas, thereby causing the production of coal to be stopped. Howat had announced that he was about to call such a strike, and would do so early in April. The result would be to prevent the carrying on of business, commerce, industries, occupations, and work in the state, to hinder, lessen, and stop the production, manufacture and transportation of the necessaries of life, and to inhibit even domestic and household activities of the people of the state. The state of Kansas owns and uses buildings and other property, conducts a variety of institutions, education, penal, and charitable, and operates certain industries, in the exercise of its governmental functions. To accomplish its ends, it purchases and uses more than 100,000 tons of coal yearly, and one of the results of the conspiracy would be to cut off this supply of fuel. Pursuant to the conspiracy, members of labor unions had already simultaneously quit work and caused mines to be shut down, assigning as a reason opposition to the law creating the court of industrial relations, coupled with some cause of minor significance. The court of industrial relations had taken jurisdiction of a controversy between employers and miners, and in the exercise of such jurisdiction had subpenaed Howat and others to testify as witnesses. They had refused to obey the subpoenas, and subpoenas for like purposes issued by the district court, and had been committed to jail for contempt of court, there to remain until they should submit to the law and give their testimony. The constitution and by-laws of District No. 14 had been amended to impose a fine of $50 for each offense on any member, committee or local officer who would be privy to referring a controversy to the court of industrial relations, and imposing a fine of $5,000 on any district officer of District No. 14 who would be a party to the reference of any grievance to the court of industrial relations. These amendments enabled Howat and his associates to impose their
7 will upon mine workers. Without continuous and effective operation of the coal mines, all the loss, suffering, and irreparable injury of the coal strike of December, 1919, fresh in the minds of the people and of the defendants, would be repeated, and the state was without adequate remedy at law. The prayer was for a temporary injunction and, upon final hearing, for a permanent injunction, enjoining the defendants from further conspiring with

ch other, and from carrying out any conspiracy to interfere with e operation of coal mines in the counties named, to limit produc- n, to cause the workers to leave employment, to influence them to it their employment, and to cause the production of coal to be de- ed, hindered, and stopped.

A temporary injunction was issued, the petition was amended and pplemented, answers were filed, and upon final hearing the court und all the facts contained in the plaintiff's pleadings to be true, und all the issues joined in favor of the plaintiff and against the fendants, and entered a decree in favor of the state, making the mporary injunction permanent.

In February, 1921, the officers of the district board of District No. called a strike in two mines of the George K. Mackie Fuel Com- ny, one in Crawford county, and one in Cherokee county. The der was transmitted to local unions Nos. 498 and 310, and by their ficers communicated to the members, who, obedient to the order, nt on strike. An affidavit stating the facts, and charging those ncerned in calling the strike with contempt, was presented to the strict court on February 7. After a hearing, the court found there as reasonable ground for believing the defendants named in the fidavit had violated the commands of the injunction, and ordered eir arrest. They were arrested and brought into court, and were ven an opportunity to purge themselves. Harvey, Cunningham, illings and Standering were dismissed, on the ground their state ents showed they were not guilty of the charge. The court di ected the state to file forthwith accusation against defendants, Howat, orchy, McIlwrath, Fleming, Titus, and Maxwell, and fixed a time r answer. The defendants answered and, after a hearing before e court, without a jury, the court found the facts stated in the accusation to be true as to the defendants last named, found them to be guilty of violation of the injunction and of con- tempt of court, and ordered that they be confined in the jail f Crawford county for the period of one year, and pay the costs of e prosecution.

The assignments of error present questions relating to regularity f the contempt proceeding, relating to validity of the violated in- nction, relating to validity of the act creating the court of in- strial relations under the constitution of the state of Kansas, and lating to validity of the act under the constitution of the United tates.

It is said the court erred in arraigning the defendants in the ab- nce of counsel, in compelling them to testify against themselves, nd afterwards in using the extorted testimony in the trial on the ac- sation for contempt. There was no "arraignment" of the defend- nts, in the sense in which that term is used in criminal procedure. he usual course in contempt proceedings was observed. When ar- sted the defendants were brought into court, and were asked if they esired to make any statements. Howat and Dorchy made voluntary tatements, and then freely gave voluntary answers to a few questions ropounded to them. They were accompanied by an attorney, who articipated in the proceedings, made no objection to what occurred,

and secured a postponement until chief counsel for defendants could arrive. Howat having answered that "we called a strike," meaning by "we" a majority of the district board of District No. 14, and Dorchy having said he was guilty, the court directed a formal accusation to be prepared, to which the defendants afterwards pleaded, and on which, in due time, they were tried. At the trial the voluntary statements and answers to questions were read in evidence. At the trial Alexander Howat was called as a witness by the defendants and, on examination by their counsel, gave a detailed account of the calling of the strike which constituted contempt of the injunction order. Some objections to the proceedings relating to evidence are not deemed to be of sufficient importance to require special consideration.

It is contended the district court erred in refusing to grant the defendants a jury trial. In support of the contention it is said the defendants were charged with a felony, and were convicted
9 of that which under the law constitutes a felony. These assertions are the foundation for an extended argument that the defendants were denied justice in the district court. The entire argument stands or falls with the truth or untruth of the assertions. Neither one has any basis of fact, or any warrant in logic or in the law.

The defendants were charged with contempt of court, for disobedience of an injunction, and contempt of court for disobedience of an injunction is not punishable as a felony, or as crime of any other degree, by any statute of this state. The purpose of the proceeding was not to enforce any criminal statute of the state, but was to vindicate the authority and integrity of the court as an organ of public justice. It was not of the slightest consequence that the acts committed in violation of the injunction, and constituting contempt, also constituted infractions of the criminal law, and infractions of the criminal law of the grade of felony. In the case of United States v. Shipp, 203 U. S. 563, 214 U. S. 386, and 215 U. S. 580, members of the mob which hanged the negro Johnson, committed contempt by committing murder. The distinction between proceedings to punish contempt committed by crime, and proceedings to punish crime as such, is as old as the law of contempt, and the distinction has been observed and acted on by courts, state and Federal, including the supreme court of the United States. This court, in a series of decisions, has interpreted the provisions of the constitution of the state cited by counsel for the defendants, in a manner too plain to be misunderstood. It is not necessary to collate authorities. Counsel for the defendants cite no cases from the literature of the law except Kansas cases, and those Kansas cases which apply directly to the subject under discussion are not referred to.

It is to be regretted that the defendants, and particularly the coal miners of southeastern Kansas, many of whom are foreigners and not familiar with our legal institutions, have not had this subject made clear to them by those in a position to do so. It would not be possible to make the matter plain, to their untrained minds, within the limits of a judicial opinion. Briefly, it may be said that

wer of a court to punish for contempt is, in the last analysis, on
nilar footing with a miner's privilege to work—it touches the right
to exist. Whatever executive officers, concerned with enforce-
ment of the criminal statutes, may do about bringing and
prosecuting criminal actions, and whatever success they may
ve in that field, the court must possess authority to punish con-
mpt, or it cannot discharge its functions as a court. This was
e law when all the modern charters of human liberty were
amed. A court established by the constitution, such as the district
urt of Crawford county, may not be deprived of this power, except
the constitution itself, and the Kansas constitution does not do
. If the power be unwisely reposed, the remedy is by constitutional
endment. Until a change is made to call a contempt proceeding
criminal prosecution, in the sense that a jury trial is necessary, is
darken counsel by misuse of well-understood terms. The fore-
ing sufficiently disposes of a contention that the defendants were
nied due process of law because they were tried by the court and
t by a jury, but the following quotation from the opinion of the
preme court of the United States, in the case of Eilenbecker v.
lymouth County, 134 U. S. 31, is pertinent:

"Whether an attachment for a contempt of court, and the judg-
ent of the court punishing the party for such contempt, is in itself
sentially a criminal proceeding or not, we do not find it necessary
decide. We simply hold that whatever its nature may be, it is
offense against the court and against the administration of
stice, for which courts have always had the right to punish the
arty by summary proceeding and without trial by jury, and that
that sense it is due process of law within the meaning of the
urteenth amendment of the constitution." (p. 39.)

In an assignment of error that the district court erred in overruling
e motion to quash the accusation, a collateral attack is made on
e injunction order, contempt of which was the basis of the ac-
sation. It is said the injunction was issued in contravention of
ction 7149 of the General Statutes of 1915, the general nature
which is indicated by the initial provision:

"That no restraining order or injunction shall be granted by any
urt of the state of Kansas, or a judge or the judges thereof, in any
se between an employer and employee, or between employers and
mployees, or between employees or between persons employed and
ersons seeking employment, involving or growing out of a dispute
oncerning terms or conditions of employment, unless necessary to
prevent irreparable injury to property or to a property right
of the party making the application, for which injury there
is no adequate remedy at law. * * *."

Let it be granted for the moment that the legislature intended
is statute to be applicable to the case presented by the petition for
junction. It was within the province of the district court to in-
pret the statute, and determine whether or not it did apply. The
urt had jurisdiction to adjudicate upon the subject. If it reached

a wrong conclusion, it did not forfeit jurisdiction. The injunction order was simply erroneous, the error was subject to correction by the ordinary method of appeal, and disobedience to the order constituted contempt. (The State, ex rel., v. Pierce, 51 Kan. 241, 32 Pac. 924.) Conceding again that the legislature intended the statute to be applicable to the case presented by the petition for injunction, there was ample necessity for issuing the injunction, to prevent irreparable injury to property and property rights of the party making the application, the state of Kansas. The statute, however, had no application to the case made by the petition for injunction. The petition presented no dispute between employer and employee, or between employers and employees, or between employees, or between persons employed and persons seeking employment, and presented no case of dispute concerning terms or conditions of employment. Whether or not the statute conflicts in any particular with the act creating the court of industrial relations, need not be discussed, because the statute has no bearing on this controversy.

Portions of the statute not quoted deal with the subjects of picketing and boycotting, and it is said the legislature, having in mind the great injustice which might be perpetrated by destroying united action, placed a definite prohibition on the issuing of injunctions in labor disputes. The portion of the defendants' brief stating this conclusion is preceded by the following remarkable paragraph:

"In this connection it must be remembered that the power of a court to grant an injunction for any purpose is statutory, and in the absence of statutory authority no power exists in a court to grant an injunction for any purpose whatever. Again, the power to grant an injunction being statutory and in derogation of the common law, the statute granting said power must be strictly construed. Since this rule is so universally followed and upheld, a citation of authorities in support of the same would be out of place."

12 The power of a court in any case to grant an injunction for any purpose is not statutory. In the absence of statute power exists in courts to grant injunctions for numerous purposes. The power not being statutory, and not being in derogation of the common law, is not strictly construed. If the power were statutory it would be liberally construed, to accomplish just and equitable purposes, because of an express statute of this state which reads as follows:

"The rule of the common law, that statutes in derogation thereof shall be strictly construed, shall not be applicable to any general statute of this state, but all such statutes shall be liberally construed to promote their object." (Gen. Stat. 1915, § 11829.)

The rule stated in the quoted paragraph is not universally followed, is not followed at all, and there are no authorities to be cited as sustaining it. This being true, the paragraph must have been intended for some document other than a brief in this court.

It is said the injunction was invalid, as an attempt to enjoin a ime. If so, the injunction order was not void, and the defendants e precluded from attacking it in this proceeding.

In order that the defendants may not feel a rule of procedure as prevented full consideration of their case, it may be said their gument is cast in the same fallacious form as the argument relating trial by jury. The purpose of the injunction was not to enjoin ime, and bore no other relation to administration of the criminal w. The purpose was to prevent the irreparable injury which the tition for injunction alleged would occur, and which the court ound would occur, unless the defendants were restrained from exeuting their designs. It might be the defendants would incur sennces to the penitentiary or to jail, but the imposition of those enalties would not fulfill the obligation of the state of Kansas to rotect its people from the calamitous consequences of the defendants' rongdoing, and for which there was no redress. The court found hat all the perils to the public welfare which accompanied the coal rike of the winter of 1919-'20, would again be incurred. That rike caused industry to stop, caused commerce to be demoralized, aused food supplies to be reduced and cut off, caused schools to lose, caused suffering in homes, and if the defendants had been ermitted to have their way, would have caused the sick to languish and die in unwarmed hospital beds in the dead of winter. If those consequences were produced in a single village by blocking the highway over which necessaries of life were rought in, anybody would say blocking the highway was a public uisance, and a court of equity could open the road. Multiplicity nd magnitude of threatened disaster do not detract from authority f a court of equity over the few determined individuals who proose to wreak the disaster. Ability of the defendants to paralyze he normal activities of a whole commonwealth did not free them rom amenability to injunction. The district court was warranted n interfering on principles identical with those applied in abatement of public nuisances, and the court was not shorn of power beause the defendants, if they persisted, would incidentally be guilty f crime.

The general finding on which the injunction was allowed included finding that the state would be prejudiced in the use of property hich it held in the capacity of owner. Conviction and incarceraon of the defendants would not get coal for the various institutions, ducational, charitable, and correctional, which the state maintains n its own buildings, upon its own land. The authorities are in ubstantial accord that this special interest authorized the state to pply for, and authorized the district court to grant, the injunction; ut this court holds that, aside from this indisputable ground, and ithout aid of the statute expressly authorizing actions of injunction n the name of the state to suppress public nuisances (Gen. Stat. 915, §7163, as amended by Laws of 1917, ch. 247, §1), the district ourt was possessed of power to grant the injunction.

In support of their contention the defendants cite some cases. he one principally relied on is the case of State v. Vaughan, 81 rk. 117, and a portion of the opinion is quoted, as follows:

"It is demonstrably true that it is a sound principle of equi jurisprudence that an injunction will not lie at the instance of th state to restrain a public nuisance where the nuisance is one arisin from the illegal, immoral or pernicious acts of men which for th time being make the property devoted to such use a nuisance, whe such nuisance is indictable and punishable under the criminal law (p. 126.)

The defendants did not quote the next succeeding sentences o the opinion, which sustain the action of the district court of Cra ford county:

"On the other hand, if the public nuisance is one touchin civil property rights or privileges of the public, or the publi health is affected by a physical nuisance, or if any other ground o equity jurisdiction exists calling for an injunction, a chancer court will enjoin, notwithstanding the act enjoined may also be crime. The criminality of the act will neither give nor oust juris diction in chancery." (p. 126.)

The opinion in the Vaughan case quotes from the opinion in th case of The People v. Condon, 102 Ill. App. 449; and the defendan make much of the decision in the Condon case because it accuse the supreme court of the United States of resorting to dictum i the case of Mugler v. Kansas, 123 U. S. 623, and because it unde takes to narrow the scope of the decision in the case of In re Del Petitioner, 158 U. S. 564.

The law of Illinois respecting the subject of the opinion in th Condon case is declared by the supreme court of that state in the ca of Stead v. Fortner, 255 Ill. 468. The following extracts fro the opinion are supported by the citation of numerous authorities

"A court exercising equitable jurisdiction will not restrain, b injunction, the commission of illegal or immoral acts and will no enjoin one engaged in the sale of liquor from making sales whic are punishable by the criminal law. But that is not the object o this suit. The law has a double purpose—to punish the perso committing an illegal act and to prohibit the use of property fo illegal purposes—and these are separate and distinct. * * *

"It is one of the most useful functions of a court of equity that may give complete and adequate relief against acts which will con stitute nuisances. * * *

"Want of jurisdiction to enjoin a nuisance which might breed pestilence or be dangerous to the welfare of the public would be reproach to the law. * * *

"A court of equity has jurisdiction to abate a public nuisance a though offenders are not only amenable to criminal laws but als where no property rights are involved in the litigation. * * *

"As we have noted above, this court has never regarded a crimina prosecution, which can only dispose of an existing nuisance and can not prevent a renewal of the nuisance, for which a new prosecution must be brought, as a complete and adequate remedy for a wron

inflicted upon the public. The public authorities have a right to institute the suit where the general public welfare demands it, and damages to the public are not susceptible of computation. The maintenance of the public health, morals, safety and welfare is on a plane above mere pecuniary damage although not susceptible of measurement in money, and to say that a court of equity may not enjoin a public nuisance because property rights are not involved, would be to say that the state is unable to enforce the law or protect its citizens from public wrongs." (pp. 474-477.)

In the case of Mugler v. Kansas, 123 U. S. 623, one of the questions was whether the equity power to abate liquor nuisances, conferred by a statute of this state, was consistent with the constitutional guaranty of liberty and property. In the opinion the court said:

"Equally untenable is the proposition that proceedings in equity for the purposes indicated in the thirteenth section of the statute are inconsistent with due process of law. 'In regard to public nuisances,' Mr. Justice Story says, 'the jurisdiction of courts of equity seems to be of a very ancient date, and has been distinctly traced back to the reign of Queen Elizabeth. The jurisdiction is applicable not only to public nuisances, strictly so called, but also to purprestures upon public rights and property. * * * In case of public nuisances, properly so called, an indictment lies to abate them, and to punish the offenders. But an information, also, lies in equity to redress the grievance by way of injunction.' 2 Story's Eq. §§921, 922. The ground of this jurisdiction in cases of purpresture, as well as of public nuisances, is the ability of courts of equity to give a more speedy, effectual, and permanent remedy, than can be had at law. They cannot only prevent nuisances that are threatened, and before irreparable mischief ensues, but arrest or abate those in progress, and, by perpetual injunction, protect the public against them in the future; whereas courts of law can only reach existing nuisances, leaving future acts to be the subject of new prosecutions or proceedings. This is a salutary jurisdiction, especially where a nuisance affects the health, morals, or safety of the community. Though not frequently exercised, the power undoubtedly exists in courts of equity thus to protect the public against injury. * * *." (p. 672.)

The pertinency of this discussion to the subject of the decision may be left to the judgment of the discriminating reader.

Referring to the case of In re Debs, Petitioner, 158 U. S. 564, the opinion in the Condon case says:

"An examination of this whole opinion shows that the court intended to place and did place the right to issue this injunction upon the sole and only ground that the property of the United States had been interferred with."

In the Debs case the court first demonstrated the undoubted pow
of the government of the United States to protect its property in t
mails by invoking the equitable remedy of injunction. The co
then said:

"We do not care to place our decision upon this ground alo
Every government, entrusted, by the very terms of its bei
16 with powers and duties to be exercised and discharged for t
general welfare, has a right to apply to its own courts for a
proper assistance in the exercise of the one and the discharge of
other, and it is no sufficient answer to its appeal to one of th
courts that it has no pecuniary interest in the matter. The oblig
tion which it is under to promote the interest of all, and to preve
the wrongdoing of one resulting in injury to the general welfa
is often of itself sufficient to give it a standing in court." (p. 58

After reviewing authorities, the opinion proceeded as follows:

"It is obvious from these decisions that while it is not the provin
of the government to interfere in any mere matter of private c
troversy between individuals, or to use its great powers to enfo
the rights of one against another, yet, whenever the wrongs co
plained of are such as affect the public at large, and are in resp
of matters which by the constitution are entrusted to the care of t
nation, and concerning which the nation owes the duty to all t
citizens of securing to them their common rights, then the mere f
that the government has no pecuniary interest in the controve
is not sufficient to exclude it from the courts, or prevent it fr
taking measures therein to fully discharge those constitutional dut

"The national government, given by the constitution power
regulate interstate commerce, has by express statute assumed jur
diction over such commerce when carried upon railroads. It
charged, therefore, with the duty of keeping those highways of int
state commerce free from obstruction, for it has always been rec
nized as one of the powers and duties of a government to remove
structions from the highways under its control." (p. 586.)

Concerning the subjects of "injunction against crime" and t
by jury in contempt proceedings, the court said:

"The acts of the defendants may or may not have been violati
of the criminal law. If they were, that matter is for inquiry
other proceedings. The complaint made against them in this is
disobedience to an order of a civil court, made for the protecti
of property and the security of rights. If any criminal prosecuti
be brought against them for the criminal offenses alleged in t
bill of complaint, of derailing and wrecking engines and trai
assaulting and disabling employees of the railroad companies,
will be no defense to such prosecution that they disobeyed the ord
of injunction served upon them and have been punished for su
disobedience.

"Nor is there in this any invasion of the constitutional right

trial by jury. We fully agree with counsel that 'it matters not what form the attempt to deny constitutional right may take. It is vain and ineffectual, and must be so declared by the courts,' and we reaffirm the declaration made for the court by Mr. Justice Bradley in Boyd v. United States, 116 U. S. 616, 635, that 'it is the
17 duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be obsta principiis.' But the power of a court to make an order carries with it the equal power to punish for a disobedience of that order, and the inquiry as to the question of disobedience has been, from time immemorial, the special function of the court."

The opinions in the Mugler and Debs cases and the opinion in the Stead case have been quoted at some length, not because they need vindication from the criticism of the Illinois appellate court, but to respond to the defendants' brief, reveal its method, and render unnecessary further examination of authorities. The conclusions stated in the Mugler and Debs cases are binding, so far as they relate to questions arising under the constitution of the United States. The opinions in the three cases sufficiently present arguments and authorities supporting the conclusions reached. Those conclusions are in harmony with previous utterances of this court, and are accepted and adhered to as sound.

It is contended the act creating the court of industrial relations contravenes section 16 of article 2 of the constitution of the state, in that it contains more than one subject, and the subjects are not clearly expressed in the title. It is said the method employed to invest the court of industrial relations with the powers and duties of the public utilities commission, which was abolished, was ineffectual, and consequently the public utilities features of the statute lack the force of law. The conclusion has nothing to do with the assignment of error, and relates to a subject which does not concern the defendants. The section of the constitution referred to does provide that no law shall be revived or amended unless the new act contain the entire act revived or the section or sections amended; but it is not material to the defendants whether the authority formerly possessed by the public utilities commission was preserved to the court of industrial relations; and if in some public utilities case it should be held that the act under consideration left the state without a public utilities law, the remainder of the act would not be affected. (Laws 1920, ch. 29, §28; The State, ex rel., v. Howat, 107 Kan. 423, 191 Pac. 585.)

In a certain sense, the act embraces two subjects: regulation
18 of public utilities, and regulation of those industries which have to do with supplying the people with necessaries of life. In the same sense, the second subject is doubly triple. It embraces food, clothing, and fuel, and it embraces production, manufacture, and distribution. According to the same method, the act might be conceived as divided into as many subjects as a carefully prepared index of its contents would disclose. That, however, is not the

pol by which to determine the scope of a statute. The question my case is, Are the particulars so diverse that they may not be noted in a single generic concept? In this instance the general ept is enterprise affected with a public interest, and the grouping ot only natural, but consistent and harmonious.

is said that use of the word "court" impairs clearness in the ex- sion of the subject of the act in its title, and that inclusion of ic utilities is not indicated at all. The first contention was suf- ntly met in the case of The State v. Scott, 108 Kan. 166, and it there said the title is at least as comprehensive as though it read act relating to (or concerning) an administrative body for the lation of industrial relations." The word "industrial" means re- ng to industry, and industry clearly embraces those departments oted to public service. When used in the plural, the word "af- ons" has the meaning of "affairs." Fifty years ago the title of act would have conveyed little or no information. It is to be , however, in the light of common knowledge of the science of ernment, and particularly the regulation of industry by admin- ative tribunals, in the year 1920; and the court is of the opinion one whose interests might be affected by the legislation would directed to details by the title.

n argument that the title is not broad enough to cover substan- provisions of the act is sufficiently disposed of by the reasoning the citation of authority contained in the opinion in the case of State v. Scott, supra.

t is said the act creating the court of industrial relations is void use it commingles functions of the three departments of gover- t. The contention was considered in the case of The State, ex rel., v. Howat, 107 Kan. 123, 191 Pac. 585, and was found to be unsound. Some additional specifications are made of functions claimed to be separate according to the orthodox ory, but they do no more than raise the question of the legality all bodies such as the interstate commerce commission, state pub- utilities commissions, and similar administrative tribunals, "cre- d for carrying into effect the will of the state, as expressed by its slation." (Reagan v. Farmers' Loan & Trust Co., 154 U. S. 2, syl. ¶ 1.) A contention that the act is void because it unlaw- es to usurp control of matters within the jurisdiction of the Fed l government and regulated by the Lever act and the Clayton act likewise disposed of in the Howat case just cited.

t is contended the act creating the court of industrial relations is l because section 12 undertakes to confer on this court original isdiction additional to that permitted by section 3 of article 3 of constitution, which reads as follows:

"The supreme court shall have original jurisdiction in proceedings quo warranto, mandamus, and habeas corpus; and such appellate isdiction as may be provided by law." (Gen. Stat. 1915, §172

The court of industrial relations is, in fact, a public-service com- ssion, the word "court" having been employed merely as a matter legislative strategy. The production, manufacture and distribu-

of food, clothing, and fuel, being industries affected with a pub-
nterest, are made subject to regulation in the same manner as
industries which have commonly been designated public utili-
Action by the court of industrial relations would necessarily
h the subjects of liberty and property, and in order to safeguard
from infringement and meet all the requirements of due
ss of law, a judicial review of orders of the administrative body
provided for by section 12. Resort to this court was authorized
rms which afford opportunity for the determination of issues
the court's independent judgment, both with respect to the
and the facts. (Ohio Valley Co. v. Ben Avon Borough, 253
287.) The appellate jurisdiction of this court not being avail-
because the court of industrial relations is a nonjudicial body,
onstitutional jurisdiction in mandamus was utilized. This juris-
on is precisely the same as that of any court of general juris-
diction in mandamus, that is to say, is plenary, may be exer-
cised to control the action of inferior tribunals (Bishop v.
Fischer, 94 Kan. 105, 145 Pac. 890; In re Petitt, 84 Kan.
114 Pac. 1071), and comprehends the power of superintending
rol to the full extent of which the writ of mandamus is capable.
andamus is indisputably a proper remedy for enforcing lawful
rs of a public-service commission (The State v. Railway Co., 81
430, 105 Pac. 704; L. R. A. 1918 E, 304, Annotation), and the
matter for debate is its appropriateness as a method of com-
ng the court of industrial relations to do its duty. The man-
us statute reads as follows:

The writ of mandamus may be issued by the supreme court or
district court, or any justice or judge thereof, during term or at
mbers, to any inferior tribunal, corporation, board or person, to
pel the performance of any act which the law specially enjoins
duty resulting from an office, trust, or station; but though it may
ire an inferior tribunal to exercise its judgment, or proceed to
discharge of any of its functions, it cannot control judicial dis-
on.
The writ may not be issued in any case where there is a plain and
uate remedy in the ordinary course of the law. * * *"
n. Stat. 1915, §§7646, 7647.)

he court of industrial relations is clearly a board, within the
ning of this statute. The entering of orders in respect to mat-
committed to its jurisdiction is a duty resulting from office, trust,
tation. The tribunal appointed to make orders in the field of
istrial relations having already functioned, application to it no
er affords remedy in the ordinary course of law for such cases.
lephone Association v. Telephone Co., 107 Kan. 169, 190 Pac.
) Constitutional limitations, state and Federal, and express
atory provisions, furnish standards of conduct. Sections 8 and 9
he court of industrial relations act require orders to be just and
onable. Section 12 itself measures the duty which the statute en-
s, and all the prerequisities exist for maintaining an action of

mandamus to compel performance of the duty to enter just, reasonable and lawful orders.

It is contended that if in any case this court should find an order made by the court of industrial relations to be unjust, unreasonable or unlawful, this court is directed to prescribe definitely what would be a proper order, and then compel the court of industrial relations to enter it. Applying the argument to action by the court of industrial relations on its public utilities side, if this court
21 should find a rate to be confiscatory, it should step over into the field of legislation, fix the correct rate, and then compel the court of industrial relations to put the prescribed rate in force. In order to impose such a meaning upon the phraseology of the statute, the court would be obliged to apply the opposite of the well-known canon of interpretation, and strive to invalidate, instead of strive to uphold, the law. The evident purpose of the legislature was to give equal remedies to and against the court of industrial relations, in order that just, reasonable and lawful regulations, when established, may prevail, and in order that, in case of contest, just, reasonable and lawful regulations shall be established. Being a creature of the legislature, the court of industrial relations may be placed under such superintending control as the legislature chooses. The discretion which the court of industrial relations exercises is not judicial discretion, and consequently is not within the protection of the mandamus statute quoted above. To accomplish the purpose of the act, the tribunal created is in effect limited in its authority to promulgation of orders of the character described in section 12. Exercise of that authority in case of controversy is, however, the principal object of the act. It is the very duty which the law specially enjoins and the duty is not performed until a just, reasonable and lawful order has been entered. The remedy of mandamus is made available, as in any other case covered by the mandamus statute, except that application must be made to this court. The court acts according to the common course of judicial procedure in actions of mandamus. Findings showing the particulars in which the contested order fails may serve as a guide in framing a proper order, but the duty to frame a proper order is legislative, and rests with the court of industrial relations. If a peremptory writ be awarded, the mandate is to perform the duty contemplated by the statute. When the mandate is obeyed, the order entered is the order of the court of industrial relations, and not of this court.

It is said the act creating the court of industrial relations is void because it contravenes the fourteenth amendment to the constitution of the United States, in that it destroys liberty of contract and permits involuntary servitude on the part of workingmen.
22 The question which presented itself to the mind of the legislature may be indicated.

Employers and employees disagree about how the product of their joint contributions to industry shall be divided. In the last analysis hours, working conditions, recognition of union, etc., revolve about this fundamental subject of grievance. The subject is of great importance to the employer. It is of even greater importance to the

employee, because on wages depend food, clothing, and shelter; recreation, and the details of daily living; the value of the worker to the community in which he lives; and even the length of time he will live. Disagreements become acute, the contestants become hostile to each other, sometimes each one resorts to force, and the public, the great employer of both labor and capital, suffers grievously. In an address before the federation of engineering societies at Washington, D. C., November 20, 1920, Mr. Herbert Hoover, now secretary of commerce and labor, made an appeal for industrial cooperation in which he said:

"In the question of industrial conflict resulting in lockout and strike one mitigating measure has been agreed upon in principle by all sections of the community. That is collective bargaining, by which, wherever possible, the parties should settle their difficulties before they start a fight. * * *

"Battle and destruction are a poor solution to these problems. The growing strength of national organizations on both sides should not and must not be contemplated as an alignment for battle. Battle quickly loses its rules of sportsmanship and adopts the rules of barbarism."

The legislature understood all this; but if the parties should not succeed in settling their difficulties, why should they be permitted to start a fight, which quickly brings upon the public a recrudescence of barbarism?

In dealing with the subject of the constitutionality of the legislation of 1920, the court can render no service by veiling the harshness of reality. The court of industrial relations is justified by facts, or is not justified at all, and it will be necessary to present a few disagreeable facts which lie naked to astonished gaze in our industrial history.

The accusation against Debs in the case which has been referred to contained the following statements of fact:

"That, as a direct result of the orders to strike upon some of the lines—notably upon the Illinois Central Railroad, the Chicago, Rock Island & Pacific, the Chicago, Burlington & Quincy, the Chicago & Alton, the Chicago & Western Indiana, and upon the Pennsylvania Company's lines—there was exercised upon the part of many of the strikers or ex-employees of the railway companies intimidation and open violence. That employees who refused to join in the strike, and others who had been employed by the railway companies to take the place of strikers, and were in the actual service of the companies, were assaulted and intimidated by the strikers, and driven from their post of duty, either by physical violence or threats of personal injury. That, during the 5th, 6th and 7th days of July, the strikers, and others acting in sympathy with them, took forcible possession of some of the roads within and adjacent to the city of Chicago, and, by physical force, prevented the passage of trains carrying mails and interstate commerce. That engines and trains of cars were derailed, and passenger trains were

assailed with stones and other missiles, as well as the employees in charge of such trains; and in some instances both the passenger cars and engines were fired upon, endangering the lives both of employees and passengers. That these mobs were in many instances led by the strikers or ex-employees of the railway companies, who had gone out of service upon the orders of the defendants as officers of the American Railway Union; and mobs composed of strikers and others were massed at different points, upon the different lines of road, within and adjacent to the city of Chicago, in such numbers as to be beyond the control of the government, state, and municipal authorities. That at least 1,000 freight cars belonging to the railway companies, some of which were loaded with interstate merchandise, were set on fire and destroyed. Signal towers and other appurtenances of the railways were burned. Employees of the railway companies who refused to obey the orders of the defendants and other officers of the American Railway Union, and remained faithful to the discharge of their duty, were violently assaulted, beaten, and bruised, and in some instances were forcibly arrested, and taken from their engines and kept for hours in confinement. That many lives were also sacrificed—all of which was a direct result of the numerous strikes ordered as aforesaid." (United States v. Debs, 64 Fed. 724, 728.)

During the progress of the strike, Debs addressed a letter to the railway managers, a portion of which reads as follows:

"The strike, small and comparatively unimportant in its inception, has extended in every direction, until now it involves or threatens not only every public interest, but the peace, security, and prosperity of our common country. The contest has waged fiercely. It has extended far beyond the limits of interests originally involved, and has laid hold of a vast number of industries and enterprises in no wise responsible for the differences and disagreements that led to the trouble. Factory, mill, mine and shop have been silenced, widespread demoralization has sway. The interests of multiplied thousands of people are suffering. The common welfare is seriously menaced. The public peace and tranquility are imperiled. Grave apprehensions for the future prevail." (p. 729.)

24 In a newspaper interview given during the strike, Debs said:

"We are in condition to keep the strike on for months. Nothing but armed intervention today permits the moving of trains. Throughout that great stretch of country which lies west of the Mississippi river our men are steadfast and willing to wait until the bitter end. * * *

"When the command of the so-called 'arteries of commerce' falls into our hands, and the trades' unions which have given us comfort require reciprocation from us, we, and we alone, are in a position to give them material assistance." (p. 730.)

What command of the arteries of commerce means was demonstrated in the circumstances under which the Adamson act was passed.

Last year the president of the American Federation of Labor told a committee of congress before which he appeared that limitations on the "right to strike" would not be obeyed, and so made an issue with the government of the United States. Petty exhibitions of arbitrary power are illustrated in the conduct of one Mike Boyle, business agent of an electrical workers' union in Chicago, and known as "Umbrella Mike." He was released from prison, to which he had been committed for criminal conspiracy, on May 8, 1920. Quite promptly he called two strikes against the city, which cut off power in municipal shops, stopped repairs on municipal pumping stations and municipal lighting systems, and stopped city hall elevators. On July 16 he called a strike which stopped operation of surface and rear lines of the city of Chicago, and thousands of wage earners were unable to reach their places of employment.

The Debs pattern has been used as a model for many a subsequent strike. Every section of the country has been made familiar with it. Its ferocity and brutality, and its relation to the public welfare, are portrayed in a recent account of the Alabama coal strike:

"The long drawn out struggle between the coal miners and the coal operators in Alabama has been brought to an end by the agreement of both sides to place the entire case in the hands of Governor Kilby. * * *

"The strike was enormously costly to the state and to the miners, and to the industry in general. * * *

"The strike formally began in September when the union ordered a general stoppage of work in District 20. Much disorder occurred in the strike region, and one miner is alleged to have been lynched. Reports from Alabama announced the suspension of civil rights in the strike zone and the sending of state troops into the field. Miners and their families were evicted from company-owned houses. The union reported that it provided food, clothing and shelter for between forty and fifty thousand men, women and children. Tent villages were erected on the hillsides after the miners were evicted." (The Survey, March 19, 1921.)

Since the conviction of some thirty or more officials and members of the Bridge and Structural Iron Workers' union by a Federal jury at Indianapolis in 1912, dynamite and nitroglycerin have not been so freely used as agents of "industrial justice," but the methods still employed are not less stern. In May, 1919, the milk drivers of Chicago struck. Babies in infant asylums and hospitals cried for milk. On May 15, health commissioner Robertson said:

"We are going to deliver milk to the quarter of a million babies and the 120 hospitals and homes if we have to press into service every police ambulance and every vehicle controlled by the city of Chicago. We have about 250,000 babies under five years of age in Chicago, and 1,000 patients at the Municipal Tuberculosis Sanitarium."

The next day the vice president of the strikers' organization said:

"Yes, picket the places and don't let any milk be delivered. You know how to stop anybody delivering. I don't have to tell you how."

Between April 6, 1917, and November 11, 1918, the period of our participation in the world war, there were more than 6,000 strikes in the United States, some of which imperiled winning the war. When the whole world was shaken by the earthquake of the world war, and the flower of this country went forward as willing as a bridegroom goes to his bride, to hurl themselves into the raging pit of hell in Western Europe, their fate there depended on patching up strikes at home.

During the war the various war agencies responded, under direction of the president, to the demands of labor with great liberality, but in his message before congress of May 20, 1919, the president said:

"We cannot go any further in our present direction. We have already gone too far. We cannot live our right of life as a nation or achieve our proper success as an industrial community if capital and labor are to continue to be antagonistic instead of being partners; if they are to continue to distrust one another and contrive how they can get the better of one another, or what perhaps amounts to the same thing, calculate by what form and degree of coercion they can manage to extort on the one hand work enough to make enterprise profitable, on the other justice and fair treatment enough to make life tolerable. That bad road has turned out a blind alley. It is no thoroughfare to real prosperity. We must find another leading in another direction and to a very different destination."

The strike record of the year 1919, however, proved to be the most disheartening one in our industrial history. The statistics are amazing, even to minds accustomed to war figures. Millions of men and women were involved. The following is a partial list of the most important strikes and lockouts shown by the government report for 1919:

"A general strike in Tacoma and Seattle in February in sympathy with the metal-trades strikers, in which 60,000 persons were involved; 65,000 employees in the Chicago stockyards struck in August; 100,000 longshoremen along the Atlantic coast struck in October; 100,000 employees in the shipyards of New York City and vicinity struck in October; 115,000 members of the building trades were locked out in Chicago in July; 125,000 in the building trades in New York City struck in February; 250,000 railroad shop workers struck in August; 367,000 iron and steel workers struck in September; and 435,000 bituminous coal miners struck in November. The number of persons concerned in these nine strikes and lockouts was upward of 1,600,000, while the total number of persons involved

n strikes and lockouts during 1919 was 4,112,507."—Monthly abor Review, June, 1920, p. 200.)

The direct losses in money amounted to stupendous sums. William Z. Foster, who conducted the steel strike, says that struggle alone st a billion dollars. The indirect losses were beyond computation. The moral effect was such that school children learned to strike; nd the unspeakable crime was committed in Boston when the olicemen struck. The plain citizen became so sated with news of rikes and threats of strikes that, unless his morning paper contained an account of some especially shocking strike incident, he awned and turned to the doings of the Gumps.

The portent of the bituminous coal miners' strike was so grave hat the President of the United States pleaded for a rescission of he strike order. Among other things, he said:

"From whatever angle the subject may be viewed, it is apparent hat such a strike in such circumstances would be the most far-eaching plan ever presented in this country to limit the facilities f production and distribution of a necessity of life and thus indirectly to restrict the production and distribution of all the necesaries of life. A strike under these circumstances is not only unstifiable, it is unlawful. * * *

"It is time for plain speaking. These matters with which we now deal touch not only the welfare of a class, but vitally concern the well-being, the comfort, and the very life of all people. I feel it my duty in the public interest to declare that ny attempt to carry out the purpose of this strike and thus to paraze the industry of the country, with the consequent suffering and istress of all our people, must be considered a grave moral and egal wrong against the government and the people of the United tates. I can do nothing less than to say that the law will be enforced, and means will be found to protect the interests of the nation n any emergency that may arise out of this unhappy business."

The president was obliged to find means to avert this grave moral nd legal wrong, and the means chosen was a mandatory injunction o withdraw the strike order. The injunction was denounced by he executive council of the American Federation of Labor, as ollows:

"The autocratic action of our government in these proceedings is of such a nature that it staggers the human mind. In a free country to conceive of a government applying for and obtaining a restraining order prohibiting the officials of a labor organization from distributing their own money for the purpose of procuring food or women and children that might be starving is something that, when known, will shock the sensibilities of man and will cause resentment."

The fact that execution of the strike order would cause tens of thousands of women and children not protected by strike funds to

freeze and starve, does not appear to have touched any sensibilities of the strike leaders.

District No. 14, the United Mine Workers of America, comprising the coal-producing counties of Kansas, constitutes a principality in Kansas but not of it, and ruled by force in mediæval fashion. In his testimony given at the trial of this cause, the defendant, Howat, told of calling the strike which constituted contempt of the injunction granted by the district court. A boy named Mishmash, employed in the Mackie mines, discovered he was more than nineteen years old, and claimed back pay, according to union contract, for full miner's wages accruing after he became nineteen. The evidence relating to the date of his birth was inconclusive, and controversy over the matter continued between the district board and the mine owners for a considerable period of time. The amount in dispute was about $225, the boy's mother needed the money, and the district board believed the mine owners were not acting fairly; therefore a strike was called. Portions of Howat's testimony follow:

28 "Q. Well, don't you know that if this boy had a claim for wages under a contract that you could recover it in court?

"A. No; I didn't know it. We never have settled any cases that way.

* * * * * * *

"Q. You think the boy couldn't collect the money in the courts?

"A. I couldn't say whether he could or not. I never tried it, and anyway, we have a contract which provides for it and we were obliged to go to court.

* * * * * * *

"Q. You don't go into court?

"A. No, sir; neither here nor in the other districts.

* * * * * * *

"Q. You didn't read the injunction?

"A. No; never did.

* * * * * * *

"Q. You don't recognize courts in the matter of settlement for wages?

"A. No, sir; we have a contract that covers that.

* * * * * * *

"Q. You don't recognize that contracts are made to be enforced in courts, then?

"A. No, sir."

Under this form of civil government there were 705 strikes in the coal mines of Kansas within a period of less than four years ending December 31, 1919. In the winter of 1919-'20, the purposes of the

ational strike were attempted to be carried out in District No. 14. he threatened consequences were so dire that the state took action this court, under the anti-trust statute, and the court appointed eivers for the coal mines. The receivers encountered difficulty securing competent managing operators, because those who were miliar with the mines and methods of coal production in that dis- ict feared they might not survive an attempt to supply the people the state with fuel. With splendid heroism, ex-service men, col- ge students, and others of patriot mold, volunteered to do the ork. Prudence demanded they be given military protection, and egiment of the Kansas National Guard was sent with them to the nes. General Wood also stationed a troop of regular army sol- ers in the vicinity. On the way to Pittsburg, movement of the state oop train was insufferably delayed, until a sharp order to proceed as given. Then the train was wrecked. After the volunteers and eir military escort arrived at Pittsburg some sniping occurred, but without fatality, some mining machinery was disabled, and some hidden stores of dynamite were discovered. The determined character of the coal-producing enterprise seems en to have been appreciated, and further violence was not offered. he sublimate cruelty of the strike method, however, was displayed the treatment of the Pittsburg hospital. It was surrounded with al mines. There were 15,000 idle miners in the district. The spital was filled with sick, many of whom were miners, and the inter weather was severely cold. Coal was denied to this hospital the strikers, although deprivation for a single day meant death patients.

At the beginning of the year 1920 it had not been demonstrated at the world would escape bankruptcy as a result of the war. he problems of economic and industrial reconstruction were not erely local and national, but were international in character. arly hopes of a speedy and easy transition from war to peace con- tions were not realized. Instead of that, the situation, always ave, was complicated and aggravated by continued rise in prices, profiteering, by social unrest fanned by radicalism, and by other gly influences. The bitterness of the struggle between those who ght to be partners in industry became acute, the only remedy for e high cost of living—joining forces in greater production—was jected, and economic readjustment promised little but economic rmoil. Under these circumstances, on January 5, 1920, the gislature met in special session at the call of Governor Allen, to nsider what it might do to protect the people of the state of Kansas om dislocations in production and distribution of the necessaries life. The result of its deliberations was the act creating the urt of industrial relations.

Recurring to the Alabama coal strike, the fatalistic doctrine of ght in the event of disagreement was acted on, and, after all the sorder and destruction and suffering and death, what happened? n agreement by both sides to place the entire case in the hands of state officer. If this method of composing disagreements be ssible at all, why fight at all?

Human progress is essentially increase in social well-being, a
the primary condition to social well-being is abolition of strife.
Kansas statute provides a permanent board of state offic
30 sitting all the time, to receive submission of differences,
adjust them, without expense to either disputant. Mem
of the board are not arbitrators. In actual practice, a board
arbitration is too frequently a jury packed on both sides. In
event, its verdict is a compromise, and the public interest is
taken into consideration. The court of industrial relations sit
administer industrial justice, and its facilities for doing so are c
plete. Its command of data and of aids to sound conclusion
cludes everything that both business and government are able
supply. It supplants no type of shop committee, no mutual-inte
department of any business organization, and no principle
voluntary adjustment. Its intention is to prevent strife in cas
disagreement, by promulgation of just, reasonable and lawful
ulations, and it must be classified as an instrument of social prog
With a tribunal of this kind to appeal to, disputants have no m
right, and have no economic excuse, for fighting after failing
agree.

Sometimes under stress of genuine emotion, sometimes in m
and sometimes in misguided ignorance, labor speaks of its "rig
to strike as God-given. Right to strike is God-given in the s
sense that right indicated by the word "property" is God-giv
They both developed naturally out of the relation of man to
environment, including other men. The primitive man clai
the game he killed, because it was necessary to his survival.
ownership extended to the flints he chipped, the arrows he barbed,
other things on which he depended for existence. Consciousness th
fight and probable injury would result, induced other men to
frain from interfering with his possession. The practice grew i
an overtly admitted claim. The practice became habitual,
customary and general, and finally crystallized into a rule, sim
through a feeling that the rule possessed obligatory force. W
legal institutions were set up, the sphere of self-help in enforcing
rule was very greatly narrowed. The right to strike grew u
precisely the same way. Quitting work, first permanently, and t
with the expectation of resuming, was found by experience to pro
a result which served an end. The practice of quitting work g
as the satisfaction was more often desired. The practice so fi
into the scheme of relations that it became recognize
31 rightful, and was protected by law. It has served as a
but valuable weapon in the attainment of justice, and
been a positive factor contributing to social progress. As in
case of property, abuse and misuse are not to be tolerated.

In Alabama, the whole controversy which the strike left unse
was placed in the hands of the governor by agreement. The gov
ment of District No. 14, United Mine Workers of America, fine
officers $5,000 each, and fines its subjects $50 each, for recogni
the court of industrial relations. In case of disagreement, the
no remedy but fight. To a fairminded person standing in the m

of the ruin wrought by a strike, it would seem the state might be interested in the mining business, in the miner, and in the man who needs coal, and might lawfully do something for each, before conflagration is started by the strike torch—the inevitable conflagration, whether the torch be applied by mine owner or by striker. Must Alabama wait until mine owner and miner see fit to go to Governor Kilby? Must Kansas be driven to operate coal mines by volunteers, under the protection of troops, in order to keep her public institutions going, and in order that her people may have fuel in winter?

It seems to this court to be quite remarkable that public interest in affairs of this kind should now be challenged by anybody—but the challenge is made, and its grounds may be briefly considered. Strangely enough, this gingham-dog and calico-cat business of eating each other up is defended under a constitution ordained and established "to insure domestic tranquillity." The mine owner vociferates "Property!" The miner shouts "Liberty!" Meanwhile, riot and blood-shed are rampant. Homeless women and children of District No. 20 watch the battle from tents on the hillside, and the nurse at the Pittsburg hospital feels her own heart freeze as she watches the temperature of her patient's room go down.

It is scarcely necessary to cite decisions to the effect that, in this country, every man holds all his rights and privileges subject to lawful interference by the state. The strike privilege was not conferred by any constitution or by any statute. It developed in the field of the common law, and normally should be subject to legislative regulation.

32 The worker tells the story of the intolerable grievances he has suffered, his helplessness in a contest with organized and syndicated capital, the necessity for combining with his fellows, and the desperation which drove them to strike. The story is true in all its details; but there is a final chapter. The public began to take an interest in strikes long ago. Sympathy was likely to be with the under dog, who was likely to be entitled to his bone, and pressure of public opinion became a valuable ally of striking workmen. Then, in many instances, public inconvenience was deliberately contrived, and the relation which the typical strike ultimately bore to public welfare is revealed by the instances cited at the beginning of this discussion. The wailing of children starving for milk fell on deaf ears in Chicago.

It is said that a man is a slave unless he may quit work. The assertion is ambiguous. If it refers to striking, which is not abandonment of the employer's service at all, it is untrue. If it refers to leaving the employer's service, it is still untrue. A train crew may rightfully be forbidden to leave a trainload of passengers between stations. Probably, identification of striking with leaving the employer's service under circumstances not so exceptional, is intended. In that sense the assertion is an abuse of language and, if made by a person capable of clarity of thought and clarity of expression, can accomplish no purpose except to obscure the truth.

It is said the worker has a right to leave his employer's service,

and what he may rightfully do, he may do with others having the same right. For obvious reasons of public policy, the privilege to discontinue personal service must be unrestrained. Every purpose of the policy is fulfilled by exercise of the privilege. When a worker undertakes to induce others to break their relationship with their employer, he steps outside the limits of the privilege which is essential to selfhood. He interferes in the affairs of others, and in a matter which bears no relation to his own personal privilege to work or quit work. The consequences are not those which follow from exercise of his own privilege, and they are to be appraised without reference to that privilege. When a worker confederates with others to leave service in a body, he steps outside the limits of

privilege essential to selfhood. It requires no confederacy to
33 enable him to quit work, and so escape servitude. Confederating being something which is outside of and unrelated to personal privilege to quit work, it is to be judged according to consequence and motive. In case of a strike, the object of the confederacy is not to preserve or to protect the privilege to quit work and be free. That privilege is already unrestrained. The object is to coerce the employer by the multiplied power of combined action and to coerce him in respect to something which bears no relation to unrestrained privilege to quit work. Conduct of the worker, therefore, has ceased to be individual and personal. It presents a social aspect; and when conduct becomes social, government takes an interest. If the general welfare be affected, government may take action.

It is said that organized labor is a part of the public, and the public has no rights superior to the toiler's right to live and to defend himself against oppression.

It is gratifying to know that the public has close relation to organized labor. Nobody disputes the toiler's right to live, or right to defend himself against oppression. If the assertion means the public has no rights superior to organized labor's right to strike, it would seem government, as the representative of the unorganized portion of the public, will be obliged to join a labor union, in order to obtain opportunity to work for the general welfare.

Let nobody be deceived concerning the relation of the strike to government. In the opinion in the Debs case, the court pointed out the attempted exercise by individuals of powers belonging to government alone. Last year, at the time of the Polish crisis, the Chicago Federation of Labor passed a resolution urging American labor bodies to prevent mobilization of military or naval forces to assist Poland. Congress passed the Adamson law. The city of Boston must be delivered over to looting by mobs of thugs under officers, who should have no interest except the public safety, may have the privilege of affiliating with the American Federation of Labor. The great city of Chicago must deal with "Umbrella Mike" in order to discharge its municipal functions. Alexander Howat does not recognize con-

It is said that mitigation of the barbarity of the strike would
34 be a step backward. In other departments of human interest we adopt measures to prevent misery and woe. The court

industrial relations is an industrial prophylactic, and the use of prophylactics has not heretofore been regarded as reactionary. In no other human relation is public brawling regarded as a public good; in no other human relation is the Higher Law a law of force; and the figure of the head of organized labor in the United States prescribing the limits of obedience to law in the name of unregulated force, calls to mind the figure of the former emperor of Germany, who, on a public occasion said: "There is only one master in this country, I am he, and I will not tolerate another"; and who later said, "Those who try to interfere with my tasks I shall crush."

It has seemed necessary to say thus much concerning the so-called "right" to strike, because of the earnestness, and in some instances the extravagance, with which it is defended. Let it be made plain here and now that the court champions no favorite in the so-called industrial conflict. On other occasions the court has spoken frankly of the inhumanity of departments of the modern industrial system, and of the cruelties which have accompanied industrial growth. Waste of human life and limb, and the casting upon society of cripples, human derelicts, and widows and orphans without means of support, were almost a feature of the conduct of some industries; and laws such as the factory act, the workmen's compensation act, and other remedial measures, were opposed with the utmost vehemence. The mining industry is not guiltless. Some who have engaged in it had no conception of public service. They mined coal for profit. They were interested in limited production, because it was believed to occasion high prices. They were not greatly concerned about cost, because the public paid the bills. This attitude resulted in chronic mismanagement, and they had no part in what they regarded as sentimental movements for amelioration. Miners were exploited through overwork and underpay, through company stores and oppressive regulations, through inadequate safeguards and accidents which took the form of holocausts, through bad sanitation and bad housing, and through long and unnecessary periods of enforced idleness. The miner had no capital except his capacity to labor. His situation was such that he was obliged to accept whatever terms and working conditions were offered him. His "liberty" to quit work and go elsewhere if not satisfied with his employer's terms, was pure myth and mockery. He could not even get in touch with the superintendent to talk over his grievances. If by some fortuity he did so, and contended too long or too strenuously, he was discharged and, if an American citizen, it was likely his place was taken by a foreign immigrant. As an individual he was helpless; but he had to live. His only remedy appeared to be to federate with others, and take such drastic action as would extort from his employer some measure of relief from conditions which could not be endured. Other chapters of our industrial history contain nothing which does not deserve praise, and they prompt eulogies of the fine spirit and attitude, the cooperative relationship, and the splendid achievements of American capital and American labor. To indulge the prompting here would serve no purpose, because, as was said in the beginning, the act creating the court of industrial relations was

justified, or was not justified, by ominous facts, some of which the court was compelled to state on this record.

The law applicable to the facts may be sketched as briefly as possible. Some centuries ago it was found expedient, in the country from which our legal institutions were derived, to regulate business in the interest of the public welfare. Some regulations were unwise and ineffective. Others served their purpose, and then fell into disuse because of changed conditions. The trend of economic development was such that for a long time regulation of business was practically dormant, and economic theory was framed accordingly, but there never was a time when legal theory forbade regulation, if public inconvenience and public oppression demanded it. Sometimes it was public health which required intervention, and sometimes public safety, but business was frequently regulated simply because it was "affected with a public interest." Our colonial history furnishes instances of such regulation, and it was not unfamiliar to framers of the constitution of the United States. When it is said, therefore, that the act of 1920 is a discredited and discarded form of interference with private business, brought from the lumber room of the remote past, the essence of the matter is not touched. Organized government has never been without power to make regulations whenever the conduct of business threatened public harm, and the power has been exercised as occasion required. Reservation to the states, in the constitution of the United States, of the police power, and limitations on exercise of that power, are subjects of familiar law. In 1876, the decision in Munn v. Illinois, 94 U. S. 113, was rendered. That decision was followed by determined reactionary efforts to limit its application to definite classes of business—business involving use of property, business enjoying a franchise, business enjoying a monopoly. These and other efforts to limit, and even to overthrow, the doctrine of the Munn case, failed, and all the arguments by which they were sustained were refuted in the opinion in the case of German Alliance Ins. Co. v. Kansas, 233 U. S. 389—a landmark in the progress of the Law almost as noteworthy as the case of Munn v. Illinois.

Eminent counsel representing employers of labor in industries affected by the act of 1920, were invited to file briefs in this case, and the court gratefully acknowledges the benefit of their very candid and very forceful criticisms of the act. Their chief contentions, including the in terrorem argument that constitutional government is jeopardized and all the affairs of life may be regulated if the Munn case be applied to any new subject, are so fully met by the decision in the Insurance Company case, that space will be given to an extended quotation from the opinion.

"In some degree the public interest is concerned in every transaction between men, the sum of the transactions constituting the activities of life. But there is something more special than this, something of more definite consequence, which makes the public interest that justifies regulatory legislation. We can best explain by examples. The transportation of property—business of common carriers—is obviously of public concern and its regulation is an accepted

vernmental power. The transmission of intelligence is of cognate aracter. There are other utilities which are denominated public, ch as the furnishing of water and light, including in the latter gas d electricity. We do not hesitate at their regulation nor at the fix- g of the prices which may be charged for their service. The basis the ready concession of the power of regulation is the public inter- . This is not denied, but its application to insurance is so far de- ed as not to extend to the fixing of rates. It is said the state has no wer to fix the rates charged to the public by either corporations or individuals engaged in a private business, and the 'test of whether the use is public or not is whether a public trust is imposed upon the property and whether the public has a gal right to the use which cannot be denied'; or, as we have said, oting counsel, 'Where the right to demand and receive service es not exist in the public, the correlative right of regulation as to tes and charges does not exist.' Cases are cited which, it must admitted, support the contention. The distinction is artificial, is, indeed, but the assertion that cited examples embrace all cases public interest. The complainant explicitly so contends, urging at the test it applies excludes the idea that there can be a public terest which gives the power of regulation as distinct from a pub- use which, necessarily, it is contended, can only apply to prop- ty, not to personal contracts. The distinction, we think, has basis in principle (Noble State Bank v. Haskell, 219 U. S. 104), r has the other contention that the service which cannot be de- anded cannot be regulated.

"Munn v. Illinois, 94 U. S. 113, is an instructive example of leg- ative power exerted in the public interest. The constitution of linois declared all elevators or storehouses, where grain or other operty was stored for a compensation, to be public warehouses, d a law was subsequently enacted fixing rates of storage. In her words, that which had been private property had from its s become, it was declared, of public concern and the compensa- n to be charged for its use prescribed. The law was sustained ainst the contention that it deprived the owners of the warehouses their property without due process of law. We can only cite the se and state its principle, not review it at any length. The prin- ple was expressed to be, quoting Lord Chief Justice Hale, 'that hen private property is "affected with a public interest it ceases to juris privati" only' and it becomes 'clothed with a public interest hen used in a manner to make it of public consequence, and affect e community at large'; and, so using it, the owner 'grants to the blic an interest in that use, and must submit to be controlled the public for the common good.' And it was said that the plication of the principle could not be denied because no precedent uld be found for a statute precisely like the one reviewed. It esented a case, the court further said, 'for the application of a ng-known and well-established principle in social science, and this atute simply extends the law so as to meet this new development commercial progress.' The principle was expressed as to prop-

erty, and the instance of its application was to property, but it is manifestly broader than that instance. It is the business that is the fundamental thing; property is but its instrument, the means of rendering the service which has become of public interest.

"That the case had broader application than the use of property is manifest from the grounds expressed in the dissenting opinion. The basis of the opinion was that the business regulated was private and had 'no special privilege connected with it, nor did the law ever extend to it any greater protection than it extended to all other private business.' The argument encountered opposing ex-
38 amples, among others, the regulation of the rate of interest on money. The regulation was accounted for on the ground that the act of Parliament permitting the charging of some interest was a relaxation of a prohibition of the common law against charging any interest, but this explanation overlooked the fact that both the common law and the act of Parliament were exercises of government regulation of a strictly private business in the interest of public policy, a policy which still endures and still dictates regulating laws. Against that conservatism of the mind, which puts to question every new act of regulating legislation and regards the legislation invalid or dangerous until it has become familiar, government—state and national—has pressed on in the general welfare and our reports are full of cases where in instance after instance the exercise of regulation was resisted and yet sustained against attacks asserted to be justified by the constitution of the United States. The dread of the moment having passed, no one is now heard to say that rights were restrained or their constitutional guaranties impaired.

"Munn v. Illinois was approved in many state decisions, but it was brought to the review of this court in Budd v. New York, 143 U. S. 517, and its doctrine, after elaborate consideration, reaffirmed and against the same arguments which are now urged against the Kansas statute. Nowhere have these arguments been, or could be, advanced with greater strength and felicity of expression than in the dissenting opinion of Mr. Justice Brewer. Every consideration was adduced, based on the private character of the business regulated and, for that reason, its constitutional immunity from regulation, with all the power of argument and illustration of which that great judge was a master. The considerations urged did not prevail. Against them the court opposed the ever-existing police power in government and its necessary exercise for the public good and declared its entire accommodation to the limitations of the constitution. The court was not deterred by the charge repeated in the case at bar that its decision had the sweeping and dangerous comprehension of subjecting to legislative regulation all of the business and affairs of life and the prices of all commodities. Whether we may apprehend such result by extending the principle of these cases to fire insurance we shall presently consider.

"In Brass v. Stoeser, 153 U. S. 391, Munn v. Illinois and Budd v. New York were affirmed. A law of the state of North Dakota was sustained which made all buildings, elevators and warehouses

used for the handling of grain for a profit public warehouses, and fixed a storage rate. The case is important. It extended the principle of the other two cases and denuded it of the limiting element which was supposed to beset it—that to justify regulation of a business the business must have a monopolistic character. That distinction was pressed and answered. It was argued, the court said (p. 402), 'that the statutes of Illinois and New York [passed on in the Munn and Budd cases] are intended to operate in great trade centers, where, on account of the business being localized in the hands of a few persons in close proximity to each other, great opportunities for combinations to raise and control elevating and storage charges are afforded, while the wide extent of the state of North Dakota and the small population of its country towns and villages are said to present no such opportunities.' And it was also urged that the method of carrying on business in North Dakota and the eastern cities was different, that the elevators in the latter were essentially means of transporting grain from the lakes to the railroads and those who owned them could, if uncontrolled by law, extort such charges as they pleased, and stress was laid upon the expression in the other cases which represented the business as a practical monopoly. A contrast was made between those conditions and those which existed in an agricultural state where land was cheap and limitless in quantity. It was replied that this difference in conditions was 'for those who make, not for those who interpret, the laws.' And considering the expressions in the other cases which, it was said, went rather to the expediency of the laws, than to their validity, yet, it was further said, the expressions had their value because the 'obvious aim of the reasoning that prevailed was to show that the subject-matter of these enactments fell within the legitimate sphere of legislative power, and that, so far as the laws and constitution of the United States were concerned, the legislation in question deprived no person of his property without due process of law.' (p. 404.)

"The cases need no explanatory or fortifying comment. They demonstrate that a business, by circumstances and its nature, may arise from private to be of public concern and be subject, in consequence, to governmental regulation. And they demonstrate, to apply the language of Judge Andrews in People v. Budd (117 N. Y. 1, 27), that the attempts made to place the right of public regulation in the cases in which it has been exerted, and of which we have given examples, upon the ground of special privilege conferred by the public on those affected cannot be supported. "The underlying principle is that business of certain kinds holds such a peculiar relation to the public interests that there is superinduced upon it the right of public regulation.' * * * It would be a bold thing to say that the principle is fixed, inelastic, in the precedents of the past, and cannot be applied though modern economic conditions may make necessary or beneficial its application. In other words, to say that government possessed at one time a greater power to recognize the public interest in a business and its regulation to pro-

mode the general welfare that government possesses to-day." (German Alliance Ins. Co. v. Kansas, 233 U. S. 389, 406-411.)

The legislature was of the opinion the industries specified in section 3 of the act of 1920 are affected with a public interest, and so declared. The declaration did not make them so. Whether they are or not depends on their relation to public interest. Without presenting the facts of which the court takes judicial knowledge concerning the peculiar relation the product of the Kansas coal mines bears to the state's fuel supply, and without discussing further the peculiar conditions under which production is accomplished, the court concludes the business of producing coal bears an intimate relation to the public peace, good order, health and welfare; that such business is affected with a public interest; and that such business may be regulated to the end that reasonable continuity and efficiency of production may be maintained.

The mills of Kansas stand to-day "at the gateway of commerce" more prominently than did private elevators forty-five years ago. Great packing plants, belonging to what the Federal trade commission calls the "Big Five," are located in Kansas. Many smaller packing companies operate plants within the state, and the meat-packing industry effectively dominates not only a food supply, but one of the great industries of the state—the live-stock industry. There are other reasons for regulation, which need not be specified because the issues in this case involve production of coal only; but the manufacture of food products is mentioned to show the precarious ground on which the state stands in respect to its supply of the necessities of life in case of emergency.

The business of producing coal being affected with a public interest to an extent of authorizing reasonable regulation, is the act of 1920 such a regulation? The defendants contend that it is not because it destroys liberty of contract.

The offending provision of the act is section 9. The section begins with the recognition of approved general principles which ought to be applied in the regulation of industry. It then makes acknowledgment of the right of free choice of employment and of the right to make and carry out fair, just and reasonable contracts and agreements of employment. The section concludes as follows:

"If, during the continuance of any such employment, the terms or conditions of any such contract or agreement hereafter entered into, are by said court, in any action or proceeding properly before it under the provisions of this act, found to be unfair, unjust or unreasonable, said court of industrial relations may by proper order so modify the terms and conditions thereof so that they will be and remain fair, just and reasonable and all such orders shall be enforced as in this act provided."

The argument in opposition to validity of the section is marred by the interlarding of imputations to the regulating body of author-

ity to act arbitrarily, to act according to its pleasure, to act according to its will, to act according to its whim. The legislature granted no such authority, and the fair presumption that public officers in such an important station will not abuse their trust. The point is made, however, that workmen have the privilege of exercising their own judgment with respect to the fairness, justness, and reasonableness of engagements with employers, and that contracts under which they work, satisfactory to themselves and to their employers, are not subject to modification or abrogation by the court of industrial relations. The argument misconceives the meaning of the section; and in order to present the proper interpretation of the section, it will be necessary to relate it to the general scheme of the law.

The legislature was moved to take action by circumstances and by events which have been narrated. They disclosed the helplessness of the people in an emergency, and the purpose was to be prepared in the future for any emergency. It would be folly to wait until it is again necessary to call out troops. Measures of preparedness are fair subjects of legislative choice, within the well-understood constitutional limitations. The subjects chosen were the necessaries of life. The extent of regulation, so far as it affects the defendants, was protection of reasonable continuity and efficiency of production. Production is fundamental: there can be no distribution or consumption until there has been production. Continuous production, and production according to the approval of an efficiency expert, are not required at all. Only that continuity and efficiency are required which will secure the people from privation and oppression. Limiting production and withdrawing from production are expressly permitted, for any purpose which does not contemplate circumvention of the law. The court of industrial relations, however, has oversight of production all the time. Jurisdiction is not suspended from crisis to crisis. If the court must wait until the evils of a crisis have been suffered, the statute is nugatory. Should authority be too zealously manifested in improper or unwarranted interference, the particular orders are subject to review, and may be annulled. A controversy between employer and workers, or between groups or crafts of workers, which endangers production, creates an emergency, with which the court may deal on its own motion, or on complaint. It may make temporary orders to preserve the peace and to protect private and public interests pending investigation. After investigation, the court makes and serves on the parties to the controversy, findings on which orders may be based settling and adjusting the controversy. The nature of the court's action depends on the result of the investigation, and its determination of the controversy extends no further than the purpose of the act requires. Orders, pursuant to findings, respecting all the common subjects of industrial controversy, are authorized. Every order made is essentially an emergency order, and continues in force only for such reasonable time, to be fixed by the court, as may be necessary to avert danger. If, after experiment, either party to the controversy finds the order unreasonable or impracticable, ap-

plication may be made for modification. Any order is subject to change by agreement between the parties to the controversy, with approval of the court. This approval extends merely to seeing that a contract shall not be made use of to defeat the policy of the statute. Collective bargaining, by unions or associations of workers, whether incorporated or unincorporated, is expressly recognized. In case of contumacy, the court is authorized to take over the coal mines, in proper proceedings, and control and operate them.

Section 9 does not authorize a general revision of labor contracts. In congruity with other sections, it does no more than provide that contracts shall not thwart achievement of the public purposes of the statute. No contract may be modified except in an action or proceeding properly before the court, that is, an action or proceeding relating to a controversy. If, in dealing with the emergency created by a controversy, the court encounters a contract which would hamper the making of a necessary order, the contract may be treated as any other element of the situation. No contract is to be regarded as unfair, unjust, or unreasonable, that is not an impediment to settlement of a controversy, and orders respecting contracts of the obstructive character are merely ancillary to determination of the controversy. The power exercised in making such orders is the same power which takes entire charge of a mine and operates it during an emergency.

Section 17 makes unlawful conspiracy to quit employment [13] and to induce others to quit, picketing, and the blockading of those who want to work, whether employees or not, by abuse, intimidation, and threat, for the purpose of accomplishing that which the statute was designed to prevent. It is said this section destroys collective bargaining. Collective bargaining is bargaining by an organization or group of workmen, on behalf of its members, with the employer. That privilege is not only protected but may be exercised, and is expected to be exercised, even to the extent of altering orders of the court of industrial relations. What the defendants contend for is license to conspire to injure the public.

It is said the act of 1920 is void because it trenches on personal liberty. The personal liberty contended for is liberty to leave the employer's service. All the leading cases in which the principle involved have been discussed are cited. It is not necessary to review them. The statute expressly guards the privilege of any employee to quit his employment at any time. He may quit before controversy arises, when controversy arises, while controversy is raging, and after controversy has been adjusted. As many others as desire may do likewise, and they may do so as the result of mutual-interest consultations. No employee may, however, transgress the limits of his personal privilege, as defined earlier in this opinion, for the purpose of limiting or suspending production, contrary to the provisions of the act.

Reference is made to cases discussing an employer's privilege to discharge workmen. The statute contains just one provision touching that subject. In order to protect jurisdiction and authority of the court of industrial relations, it is made unlawful to discharge

orkman for complaining to or testifying before the court. In no ther respect is the employer's right to "hire and fire" restricted. he defendants are not interested in the provisions referred to. If ey were, and if the provision were invalid, it would not vitiate the alid portions of the statute. Understanding the pioneer character f its work, the legislature framed the statute so that any invalid rovision—not section, but provision (section 28)—may be elimiated without affecting others. This rule of interpretation extends to application of the same provision to different subjects.

Heretofore the industrial relationship has been tacitly regarded as existing between two members—industrial manager, nd industrial worker. They have joined wholeheartedly in excluding others. The legislature proceeded on the theory there is a third ember of those industrial relationships which have to do with production, preparation and distribution of the necessaries of life—the ublic. The legislature also proceeded on the theory the public is not silent partner. Whenever the dissentions of the other two become flagrant, the third member may see to it the business does not stop. he privilege of industrial managers to organize is not disputed. he privilege of industrial workers to organize is expressly recogized. Collective bargaining between the two organizations is not nly encouraged, but is in effect placed on the plane of duty. The ights of society as a whole, however, are dominant over industry; nd the state is under obligation to intervene to compel settlement f differences whenever failure of manager and laborer to agree endangers the public safety or causes general distress.

The judgment of the district court is affirmed.

All the justices concurring.

A true copy. Attest:

[SEAL]

Clerk of the Supreme Court.

The Kansas Court of Industrial Relations.

Chapter 29, Special Session Laws of 1920

An Act Creating the Court of Industrial Relations, Defining Its Powers and Duties and Relating Thereto, Abolishing the Public Utilities Commission, Repealing All Acts and Parts of Acts in Conflict Therewith and Providing Penalties for the Violation of This Act.

Be it enacted by the Legislature of the State of Kansas:

Section 1. There is hereby created a tribunal to be known as he Court of Industrial Relations, which shall be composed of three udges who shall be appointed by the governor, by and with the dvice and consent of the Senate. Of such three judges first appointed, one shall be appointed for a term of one year, one for a term of two years, and one for a term of three years, said terms o begin simultaneously upon qualification of the persons appointed

therefor. Upon the expiration of the term of the three judges first appointed as aforesaid, each succeeding judge shall be appointed and shall hold his office for a term of three years and until his successor shall have been qualified. In case of a vacancy in the office of judge of said Court of Industrial Relations the governor shall appoint his successor to fill the vacancy for the unexpired term. The salary of each of said judges shall be five thousand dollars per year, payable monthly. Of the judges first to be appointed, the one appointed for the three-year term shall be the presiding judge, and thereafter the judge whose term of service has been the longest shall be the presiding judge: Provided, That in case two or more of said judges shall have served the same length of time, the presiding judge shall be designated by the governor.

Sec. 2. The jurisdiction conferred by law upon the Public Utilities Commission of the state of Kansas is hereby conferred upon the Court of Industrial Relations, and the said Court of Industrial Relations is hereby given full power, authority and jurisdiction to supervise and control all public utilities and all common carriers as defined in sections 8329 and 8330 of the General Statutes of
46 Kansas for 1915, doing business in the state of Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. All laws relating to the powers, authority, jurisdiction and duties of the Public Utilities Commission of this state are hereby adopted and all powers, authority, jurisdiction and duties by said laws imposed and conferred upon the Public Utilities Commission of this state relating to common carriers and public utilities are hereby imposed and conferred upon the Court of Industrial Relations created under the provisions of this act; and in addition thereto said Court of Industrial Relations shall have such further power, authority and jurisdiction and shall perform such further duties as are in this act set forth, and said Public Utilities Commission is hereby abolished: That all pending actions brought by or against the said Public Utilities Commission of this state shall not be affected, but the same may be prosecuted or defended by and in the name of the Court of Industrial Relations. Any investigation, examination, or proceedings had or undertaken, commenced or instituted by or pending before said Public Utilities Commission at the time of the taking effect of this act are transferred to and shall be continued and heard by the said Court of Industrial Relations hereby created, under the same terms and conditions and with like effect as though said Public Utilities Commission had not been abolished.

Sec. 3. (*a*) The operation of the following named and indicated employments, industries, public utilities and common carriers are hereby determined and declared to be affected with a public interest and therefore subject to supervision by the state as herein provided for the purpose of preserving the public peace, protecting the public health, preventing industrial strife, disorder and waste, and securing regular and orderly conduct of the business directly affecting the living conditions of the people of this state and in the pro-

tion of the general welfare, to wit: (1) The manufacture or preparation of food products whereby, in any stage of the process, substances are being converted, either partially or wholly, from their natural state to a condition to be used as food for human beings; (2) The manufacture of clothing and all manner of wearing apparel in common use by the people of this state whereby,
47 in any stage of the process, natural products are being converted, either partially or wholly, from their natural state to a condition to be used as such clothing and wearing apparel; (3) The mining or production of any substance or material in common use as fuel either for domestic, manufacturing, or transportation purposes; (4) The transportation of all food products and articles or substances entering into wearing apparel, or fuel, as aforesaid, from the place where produced to the place of manufacture or consumption; (5) All public utilities as defined by section 8329, and all common carriers as defined by section 8330 of the General Statutes of Kansas of 1915.

(*b*) Any person, firm or corporation engaged in any such industry or employment, or in the operation of such public utility or common carrier, within the state of Kansas, either in the capacity of owner, officer, or worker, shall be subject to the provisions of this act, except as limited by the provisions of this act.

Sec. 4. Said Court of Industrial Relations shall have its office at the capital of said state in the city of Topeka, and shall keep a record of all its proceedings which shall be a public record and subject to inspection the same as other public records of this state. Said court, in addition to the powers and jurisdiction heretofore conferred upon, and exercised by, the Public Utilities Commission, is hereby given full power, authority and jurisdiction to supervise, direct and control the operation of the industries, employments, public utilities, and common carriers in all matters herein specified and in the manner provided herein, and to do all things needful for the proper and expeditious enforcement of all the provisions of this act.

Sec. 5. Said Court of Industrial Relations is hereby granted full power to adopt all reasonable and proper rules and regulations to govern its proceedings, the service of process, to administer oaths, and to regulate the mode and manner of all its investigations, inspections and hearings: Provided, however, That in the taking of testimony the rules of evidence, as recognized by the supreme court of the state of Kansas in original proceedings therein, shall be observed by said Court of Industrial Relations; and testimony so taken shall in all cases be transcribed by the reporter for said Court of Industrial Relations in duplicate, one copy of said testimony
48 to be filed among the permanent records of said court, and the other to be submitted to said supreme court in case the matter shall be taken to said supreme court under the provisions of this act.

Sec. 6. It is hereby declared and determined to be necessary for the public peace, health and general welfare of the people of this state that the industries, employments, public utilities and common carriers herein specified shall be operated with reasonable continuity and efficiency in order that the people of this state may live in peace and security, and be supplied with the necessaries of life. No person, firm, corporation, or association of persons shall in any manner or to any extent, willfully hinder, delay, limit or suspend such continuous and efficient operation for the purpose of evading the purpose and intent of the provisions of this act; nor shall any person, firm, corporation, or association of persons do any act or neglect or refuse to perform any duty herein enjoined with the intent to hinder, delay, limit or suspend such continuous and efficient operation as aforesaid, except under the terms and conditions provided in this act.

Sec. 7. In case of a controversy arising between employers and workers, or between groups or crafts of workers, engaged in any of said industries, employments, public utilities, or common carriers, if it shall appear to said Court of Industrial Relations that said controversy may endanger the continuity or efficiency of service of any of said industries, employments, public utilities or common carriers, or affect the production or transportation of the necessaries of life affected or produced by said industries or employments, or produce industrial strife, disorder or waste, or endanger the orderly operation of such industries, employments, public utilities or common carriers, and thereby endanger the public peace or threaten the public health, full power, authority and jurisdiction are hereby granted to said Court of Industrial Relations, upon its own initiative, to summon all necessary parties before it and to investigate said controversy, and to make such temporary findings and orders as may be necessary to preserve the public peace and welfare and to preserve and protect the status of the parties, property and public interests involved pending said investigations, and to take evidence and to examine all necessary records, and to investigate con-
19 ditions surrounding the workers, and to consider the wages paid to labor and the return accruing to capital, and the rights and welfare of the public, and all other matters affecting the conduct of said industries, employments, public utilities or common carriers, and to settle and adjust all such controversies by such findings and orders as provided in this act. It is further made the duty of said Court of Industrial Relations, upon complaint of either party to such controversy, or upon complaint of any ten citizen taxpayers of the community in which such industries, employments, public utilities or common carriers are located, or upon the complaint of the attorney-general of the state of Kansas, if it shall be made to appear to said court that the parties are unable to agree and that such controversy may endanger the continuity or efficiency of service of any of said industries, employments, public utilities or common carriers, or affect the production or transportation of the necessaries of life affected or produced by said industries or employments, or

roduce industrial strife, disorder or waste, or endanger the orderly peration of such industries, employments, public utilities or com- non carriers, and thereby endanger the public peace or threaten the ublic health, to proceed and investigate and determine said contro- ersy in the same manner as though upon its own initiative. After he conclusion of any such hearing and investigation, and as ex- editiously as possible, said Court of Industrial Relations shall make nd serve upon all interested parties its findings, stating specifically he terms and conditions upon which said industry, employment, tility or common carrier should be thereafter conducted insofar as he matters determined by said court are concerned.

SEC. 8. The Court of Industrial Relations shall order such changes, f any, as are necessary to be made in and about the conduct of said ndustry, employment, utility or common carrier, in the matters of orking and living conditions, hours of labor, rules and practices, nd a reasonable minimum wage, or standard of wages, to conform o the findings of the court in such matters, as provided in this act, nd such orders shall be served at the same time and in the same man- er as provided for the service of the court's findings in this act:

Provided, All such terms, conditions and wages shall be just and reasonable and such as to enable such industries, em- ployments, utilities or common carriers to continue with rea- onable efficiency to produce or transport their products or continue heir operations and thus to promote the general welfare. Service f such order shall be made in the same manner as service of notice f any hearing before said court as provided by this act. Such term onditions, rules, practices, wages, or standard of wages, so fixed and determined by said court and stated in said order, shall continue for uch reasonable time as may be fixed by said court, or until changed y agreement of the parties with the approval of the court. If either arty to such controversy shall in good faith comply with any order f said Court of Industrial Relations for a period of sixty days or more, and shall find said order unjust, unreasonable or impracticable, aid party may apply to said Court of Industrial Relations for a odification thereof and said Court of Industrial Relations shall hear nd determine said application and make findings and orders in like manner and with like effect as originally. In such case the evidence aken and submitted in the original hearing may be considered.

SEC. 9. It is hereby declared necessary for the promotion of the eneral welfare that workers engaged in any of said industries, em- loyments, utilities or common carriers shall receive at all times a fair age and have healthful and moral surroundings while engaged in uch labor; and that capital invested therein shall receive at all times fair rate of return to the owners thereof. The right of every per- on to make his own choice of employment and to make and carry ut fair, just and reasonable contracts and agreements of employ- ment, is hereby recognized. If, during the continuance of any such mployment, the terms or conditions of any such contract or agree- ment hereafter entered into, are by said court, in any action or pro- eeding properly before it under the provisions of this act, found to

be unfair, unjust or unreasonable, said Court of Industrial Relatio
may by proper order so modify the terms and conditions thereof
that they will be and remain fair, just and reasonable and all su
orders shall be enforced as in this act provided.

Sec. 10. Before any hearing, trial or investigation shall be held b
said court, such notice as the court shall deem necessary shall b
given to all parties interested by registered U. S. mail ad
51 dressed to said parties to the post office of the usual place o
residence or business of said interested parties when same
known, or by the publication of notice in some newspaper of genera
circulation in the county in which said industry or employment, o
the principal office of such utility or common carrier is located, an
said notice shall fix the time and place of said investigation or hea
ing. The costs of publication shall be paid by said court out of an
funds available therefor. Such notice shall contain the substance o
the matter to be investigated, and shall notify all persons interested i
said matter to be present at the time and place named to give suc
testimony or to take such action as they may deem proper.

Sec. 11. Said Court of Industrial Relations may employ a compe
tent clerk, marshal, shorthand reporter, and such expert accountants
engineers, stenographers, attorneys and other employees as may b
necessary to conduct the business of said court; shall provide itse
with a proper seal and shall have the power and authority to issu
summons and subpoenas and compel the attendance of witnesses an
parties and to compel the production of the books, correspondence
files, records, and accounts of any industry, employment, utility o
common carrier, or of any person, corporation, association or unio
of employees affected, and to make any and all investigations nece
sary to ascertain the truth in regard to said controversy. In case any
person shall fail or refuse to obey any summons or subpoena issue
by said court after due service then and in that event said court is
hereby authorized and empowered to take proper proceedings in any
court of competent jurisdiction to compel obedience to such summons
or subpoena. Employees of said court whose salaries are not fixe
by law shall be paid such compensation as may be fixed by said court
with the approval of the governor.

Sec. 12. In case of the failure or refusal of either party to said con
troversy to obey and be governed by the order of said Court of In
dustrial Relations, then and in that event said court is hereby author
ized to bring proper proceedings in the supreme court of the state o
Kansas to compel compliance with said order; and in case either part
to said controversy should feel aggrieved at any order made and en
tered by said Court of Industrial Relations, such party is hereby au
thorized and empowered within ten days after service of suc
52 order upon it to bring proper proceedings in the supreme
court of the state of Kansas to compel said Court of Industria
Relations to make and enter a just, reasonable and lawful order i
the premises. In case of such proceedings in the supreme court b
either party, the evidence produced before said Court of Industrial
Relations may be considered by said supreme court, but said supreme

court, if it deem further evidence necessary to enable it to render a just and proper judgment, may admit such additional evidence in open court or order it taken and transcribed by a master or commissioner. In case any controversy shall be taken by either party to the supreme court of the state of Kansas under the provisions of this act, said proceedings shall take precedence over other civil cases before said court, and a hearing and determination of the same shall be by said court expedited as fully as may be possible consistent with a careful and thorough trial and consideration of said matter.

Sec. 13. No action or proceeding in law or equity shall be brought by any person, firm or corporation to vacate, set aside, or suspend any order made and served as provided in this act, unless such action or proceeding shall be commenced within thirty days from the time of the service of such order.

Sec. 14. Any union or association of workers engaged in the operation of such industries, employments, public utilities or common carriers, which shall incorporate under the laws of this state shall be by said Court of Industrial Relations considered and recognized in all its proceedings as a legal entity and may appear before said Court of Industrial Relations through and by its proper officers, attorneys or other representatives. The right of such corporations, and of such unincorporated unions or associations of workers, to bargain collectively for their members is hereby recognized: Provided, That the individual members of such unincorporated unions or associations, who shall desire to avail themselves of such right of collective bargaining, shall appoint in writing some officer or officers of such union or association, or some other person or persons as their agents or trustees with authority to enter into such collective bargains and to represent each and every of said individuals in all matters relating thereto. Such written appointment of agents or trustees shall be made a permanent record of such union or association. All such collective bargains, contracts, or agreements shall be subject to the provisions of section nine of this act.

Sec. 15. It shall be unlawful for any person, firm or corporation to discharge any employee or to discriminate in any way against any employee because of the fact that any such employee may testify as a witness before the Court of Industrial Relations, or shall sign any complaint or shall be in any way instrumental in bringing to the attention of the Court of Industrial Relations any matter of controversy between employers and employees as provided herein. It shall also be unlawful for any two or more persons, by conspiring or confederating together, to injure in any manner any other person or persons, or any corporation, in his, their, or its business, labor, enterprise, or peace and security, by boycott, by discrimination, by picketing, by advertising, by propaganda, or other means, because of any action taken by any such person or persons, or any corporation, under any order of said court, or because of any action or proceeding instituted in said court, or because any such person or persons, or corporation, shall have invoked the jurisdiction of said court in any matter provided for herein.

Sec. 16. It shall be unlawful for any person, firm, or corporation engaged in the operation of any such industry, employment, utility or common carrier willfully to limit or cease operations for the purpose of limiting production or transportation or to affect prices for the purpose of avoiding any of the provisions of this act; but any person, firm or corporation so engaged may apply to said Court of Industrial Relations for authority to limit or cease operations, stating the reasons therefor, and said Court of Industrial Relations shall hear said application promptly, and if said application shall be found to be in good faith and meritorious, authority to limit or cease operations shall be granted by order of said court. In all such industries, employments, utilities or common carriers in which operation may be ordinarily affected by changes in season, market conditions, or other reasons or causes inherent in the nature of the business, said Court of Industrial Relations may, upon application and after notice to all interested parties, and investigation, as herein provided, make orders fixing rules, regulations and practices to govern the operation of such industries, employments, utilities or common carriers for the purpose of securing the best service to the public consistent with the rights of employers and employees engaged in the operation of such industries, employments, utilities or common carriers.

Sec. 17. It shall be unlawful for any person, firm or corporation or for any association of persons, to do or perform any act forbidden or to fail or refuse to perform any act or duty enjoined by the provisions of this act, or to conspire or confederate with others to do or perform any act forbidden, or to fail or refuse to perform any act or duty enjoined by the provisions of this act, or to induce or intimidate any person, firm or corporation engaged in any of said industries, employments, utilities or common carriers to do any act forbidden or to fail or refuse to perform any act or duty enjoined by the provisions of this act, for the purpose or with the intent to hinder, delay, limit, or suspend the operation of any of the industries, employments, utilities or common carriers herein specified or indicated, or to delay, limit, or suspend the production or transportation of the products of such industries, or employments, or the service of such utilities or common carriers. Provided, That nothing in this act shall be construed as restricting the right of any individual employee engaged in the operation of any such industry, employment, public utility, or common carrier to quit his employment at any time, but it shall be unlawful for any such individual employee or other person to conspire with other persons to quit their employment or to induce other persons to quit their employment for the purpose of hindering, delaying, interfering with, or suspending the operation of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act, or for any person to engage in what is known as "picketing" or to intimidate by threats, abuse, or in any other manner, any person or persons with intent to induce such person or persons to quit such employment, or for the purpose of deterring or preventing any other person or persons from accepting employment or from remaining in the employ of any of the

industries, employments, public utilities, or common carriers governed by the provisions of this act.

Sec. 18. Any person willfully violating the provisions of this act, or any valid order of said Court of Industrial Relations, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction of this state shall be punished by a fine of not to exceed $1,000, or by imprisonment in the county jail for a period of not to exceed one year, or by both such fine and imprisonment.

Sec. 19. Any officer of any corporation engaged in any of the industries, employments, utilities or common carriers herein named and specified, or any officer of any labor union or association of persons engaged as workers in any such industry, employment, utility or common carrier, or any employer of labor, coming within the provisions of this act, who shall willfully use the power, authority or influence incident to his official position, or to his position as an employer of others, and by such means shall intentionally influence, impel, or compel any other person to violate any of the provisions of this act, or any valid order of said Court of Industrial Relations, shall be deemed guilty of a felony and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine not to exceed $5,000, or by imprisonment in the state penitentiary at hard labor for a term not to exceed two years, or by both such fine and imprisonment.

Sec. 20. In case of the suspension, limitation or cessation of the operation of any of the industries, employments, public utilities or common carriers affected by this act, contrary to the provisions hereof, or to the orders of said court made hereunder, if it shall appear to said court that such suspension, limitation, or cessation shall seriously affect the public welfare by endangering the public peace, or threatening the public health, then said court is hereby authorized, empowered and directed to take proper proceedings in any court of competent jurisdiction of this state to take over, control, direct and operate said industry, employment, public utility or common carrier during such emergency: Provided, That a fair return and compensation shall be paid to the owners of such industry, employment, public utility or common carrier, and also a fair wage to the workers engaged therein, during the time of such operation under the provisions of this section.

Sec. 21. When any controversy shall arise between employer and employee as to wages, hours of employment, or working or living conditions, in any industry not hereinbefore specified, the parties to such controversy may, by mutual agreement, and with the consent of the court, refer the same to the Court of Industrial Relations for its findings and orders. Such agreement of reference shall be in writing, signed by the parties thereto; whereupon said court shall proceed to investigate, hear, and determine said controversy as in other cases, and in such case the findings and orders of the Court of Industrial Relations as to said controversy

shall have the same force and effect as though made in any essen
industry as herein provided

Sec. 22. Whenever deemed necessary by the Court of Industri
Relations, the court may appoint such person, or persons, havin
a technical knowledge of bookkeeping, engineering, or other tech
nical subjects involved in any inquiry in which the court is engaged
as a commissioner for the purpose of taking evidence with relation
to such subject. Such commissioner when appointed shall take an
oath to well and faithfully perform the duties imposed upon him
and shall thereafter have the same power to administer oaths, compel
the production of evidence, and the attendance of witnesses as the
said court would have if sitting in the same matter. Said commis
sioner shall receive such compensation as may be provided by law
or by the order of said court, to be approved by the governor.

Sec. 23. Any order made by said Court of Industrial Relations
as to a minimum wage or a standard of wages shall be deemed prima
facie reasonable and just, and if said minimum wage or standard
of wages shall be in excess of the wages theretofore paid in the in
dustry, employment, utility or common carrier, then and in the
event the workers affected thereby shall be entitled to receive said
minimum wage or standard of wages from the date of the service
of summons or publication of notice instituting said investigation
and shall have the right individually, or in case of incorporated
unions or associations, or unincorporated unions or associations en
titled thereto, collectively, to recover in any court of competent
jurisdiction the difference between the wages actually paid and such
minimum wage or standard of wages so found and determined by
said court in such order. It shall be the duty of all employers affected
by the provisions of this act, during the pendency of an
investigation brought under this act, or any litigation result
ing therefrom, to keep an accurate account of all wages paid
to all workers interested in said investigation or proceeding. Pro
vided, That in case said order shall fix a wage or standard of wages
which is lower than the wages theretofore paid in the industry, em
ployment, utility or common carrier affected, then and in that event
the employers shall have the same right to recover in the same man
ner as provided in this section with reference to the workers.

Sec. 24. With the consent of the governor, the judges of said
Court of Industrial Relations are hereby authorized and empowered
to make, or cause to be made, within this state or elsewhere, such
investigations and inquiries as to industrial conditions and relations
as may be profitable or necessary for the purpose of familiarizing
themselves with industrial problems such as may arise under the
provisions of this act. All the expenses incurred in the performance
of their official duties by the individual members of said court and
by the employees and officers of said court, shall be paid by the state
out of funds appropriated therefor by the legislature, but all war
rants covering such expenses shall be approved by the governor of
said state.

Sec. 25. The rights and remedies given and provided by this act shall be construed to be cumulative of all other laws in force in said state relating to the same matters, and this act shall not be interpreted as a repeal of any other act now existing in said state with reference to the same matters referred to in this act, except where the same may be inconsistent with the provisions of this act.

Sec. 26. The provisions of this act and all grants of power, authority and jurisdiction herein made to said Court of Industrial Relations shall be liberally construed and all incidental powers necessary to carry into effect the provisions of this act are hereby expressly granted to and conferred upon said Court of Industrial Relations.

Sec. 27. Annually and on or before January first of each year, said Court of Industrial Relations shall formulate and make a report of all its acts and proceedings, including a financial statement of expenses, and shall submit the same to the governor of this state for his information. All expenses incident to the conduct of the business of said Court of Industrial Relations shall be paid by the said court on warrants signed by its presiding judge and clerk, and counter-signed by the governor and shall be paid out of funds appropriated therefor by the legislature. The said Court of Industrial Relations shall, on or before the convening of the legislature, make a detailed estimate of the probable expenses of conducting its business and proceedings for the ensuing two years, and attach thereto a copy of the reports furnished the governor, all of which shall be submitted to the governor of this state and by him submitted to the legislature.

Sec. 28. If any section or provision of this act shall be found invalid by any court, it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section or provision, and the act as a whole shall not be declared invalid by reason of the fact that one or more sections or provisions may be found to be invalid by any court.

Sec. 29. All acts and parts of acts in conflict herewith are hereby repealed.

Sec. 30. This act shall take effect and be in force from and after its publication in the official state paper.

Be it further remembered, That on the 1st day of July, 1921 there was filed in the office of the Clerk of the Supreme Court of the State of Kansas, a Petition for a rehearing, prepared by the appellants, which Petition for a rehearing is in the words and figures as follows, to-wit:

26 In the Supreme Court of the State of Kansas.

No. 23505.

STATE OF KANSAS on the Relation of RICHARD HOPKINS, as Attorney General, Appellee,

vs.

ALEXANDER HOWAT et al., Appellants.

Petition for Rehearing.

Now come the appellants in the above entitled cause and ask the court to reopen said cause and to grant a rehearing of the same for the following reasons:

First.

That in holding that the defendants below were not entitled to a trial by jury, the court has inadvertently misconstrued said cases cited as authority and overlooked certain principles of law applicable to the defendants' right to a trial by jury.

In passing upon this point the opinion of Justice Burch, speaking for the court, states that the defendants cited only Kansas cases from the letter of the law relating to the right of trial by jury in contempt cases in which the acts constituting the contempt constitute a felony. In this respect the court is in error for the reason that the cases cited and relied upon by the defendants in support of their alleged right to a trial by jury were not in the main Kansas cases. The cases to which the court had reference in speaking of the Kansas cases cited, and its assertion as to the inapplicability of the same to the point in issue are no doubt the cases of State vs. Wells, 63 Ks., 792, and State vs. Simmons, 61 Ks., 752, which cases

27 were cited not for the purpose of proving the right of the defendants to a trial by jury but for the purpose of indicating the distinction always recognized in Kansas, as well as other states, with respect to the right of trial by jury in cases constituting felony and those constituting a misdemeanor only.

These cases, State vs. Wells, the opinion of which was written by Justice Burch, and the case of State vs. Simmons, the opinion of which was written by Chief Justice Doster, unquestionably are authority for the distinction between felony cases and misdemeanor cases, as far as the right of trial by jury is concerned.

The above distinction between felony cases and cases constituting a misdemeanor only being established the question arises as to whether or not this distinction is of importance or whether the same is recognized in determining the right to a trial by jury in a contempt case. The position of the defendant is that the distinction between the two offenses applies with as great force to a right of trial by jury in a contempt case as it does to a right of trial by jury in any case which can possibly arise, which position is not only

supported and sustained by authorities cited in Appellants' Brief but by authorities hereinafter cited.

To say that acts constituting a felony which also constitute a violation of an injunction are punishable as acts constituting a contempt of said injunction and at the same time punishable as criminal acts is to leave the door entirely open to a punishment of any act as a contempt even though it also be a felony, at the discretion of the judge who sees fit to grant an injunction enjoining said act. For it must be admitted that in a situation such as the one referred to the act constituting the violation of the injunction and constituting the felony are one and the same act.

28 Second.

That in deciding that the court of Industrial Relations Act does not commingle the functions of the three great departments of government, this court has overlooked, inadvertently, previous decisions of this court and has misconstrued the decision cited in said opinion as being authority for the decision in the instant case. The court in its opinion in this case, on page 18 and 19, disposes of the above contention by stating that the contention was considered in the case of the State, ex rel. vs. Howat, 107, Ks. 423 and found to be unsound. A careful reading of the case cited on pages 431 and 432 will convince the court that this important question was not considered by the learned judge who wrote the opinion as having been squarely before the court in that case, for he remarks at the end of the paragraph,

"The functions of a tribunal of the general character of the Court of Industrial Relations has become so fully recognized that we do not regard it as necessary to undertake a review of the subject at this time."

To let this important question go off as having been definitely settled in the first Howat case would be to establish a precedent in this court based upon no well reasoned opinion, but upon mere obiter dictum. We believe that in justice to itself, if the opinions written when this court was standing as a bulwark against the encroachments of radical legislation of another day are to be reversed, that a far greater consideration should be given the reasons which impel the court to make such change and the exact line of demarcation definitely set out so that there will be no doubt in the mind of any investigator as to what extent the former opinions of this court, such as the State vs. Johnson, 61 Ks. 803, have ceased to correctly declare the law.

We entreat the court to reopen this case and, recognizing that the State vs. Howat, 107 Ks., page 423, does not adequately draw
29 the line nor sufficiently consider the proposition of law under discussion here, give to those former decisions of this court the weight to which we believe they are justly entitled.

Third.

That in deciding in favor of the validity of Section 12 of the Court of Industrial Relations Act, the court has overlooked previous decisions and further that through inadvertence has mistaken the meaning of the Industrial Court Act. Section 12 of the Court of Industrial Relations Act attempts to confer certain jurisdiction upon the Supreme Court. We respectfully submit that the court has not made the distinction between similar provisions of law providing for superintendence of a similar tribunal by the courts.

We respectfully submit that in the discussion of the case relating to this proposition this court has extended the meaning of mandamus to point far beyond the purview of that remedy as laid down in its previous decisions and that the language used, if permitted to stand unqualified, would set and establish a precedent which would be dangerous when this remedy is sought in other classes of cases. Where the application of the language of the opinion would be to actual cases instead of, as at the present time, to a hypothetical case, the danger of the language employed in this case would become apparent. Had the Legislature designated some court of general jurisdiction as the judicial agency to review acts of the court of Industrial Relations would the course to be there pursued be the action of mandamus in the strict sense of the word? Certainly there is not in all the legislation providing for a review by courts of general jurisdiction of the rules and orders of such a board as the Industrial Relations Court, an example of where mandamus has been thought to be the proper remedy

30 It is basic that mandamus will not lie except to compel the performance of the ministerial duties. The act of fixing a rate or a standard of wage could no more be said to be ministerial than could an act of the Legislature passing some act such as appropriation bills which it is in duty bound to do where the amounts and other details would be left to the judgment of the Legislature.

We respectfully ask that this case may be ordered to be reheard upon this ground to the end that counsel may have an opportunity to more fully present the question of the limitations of the action of mandamus and that the court may have an opportunity to more fully consider the same before the precedent of such far reaching effects may be established as the law of this state.

Fourth

In deciding that the Court of Industrial Relations Act did not contravene the provisions of the Fourteenth Amendment of the Constitution of the United States has inadvertently overlooked certain opinions on the subject of the Supreme Court of the United States and of the State of Kansas.

The Fourteenth Amendment to the Constitution of the United States provides, in Section One

"No state shall make or enforce any law which shall abridge privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The Court of Industrial Relations law is designed primarily to exercise superintendence over wages, living conditions, etc., in industry. The Court of Industrial Relations has this specific power set out in Section 9 of the Act.

"If during the continuance of any such employment the terms or conditions of any such contract or agreement hereafter entered into, are by said court, in any action or proceeding properly before it under the provisions of this Act, found to be unfair, unjust
31 or unreasonable, the said Court of Industrial Relations may by proper order so modify the terms and conditions thereof so that they will be, and remain fair, just and reasonable and all such orders shall be enforced as in this Act provided."

This state was treated once before to a flood of legislation of this character. The Court of Visitation was erected. The "Script Law" was passed and various other instances of paternalism appeared on the statute books. These statutes were unconstitutional—they were an infringement upon the rights of the people and they were so declared by this Court.

In State vs. Haun, 61 Kan., page 146, the court had before it for consideration what was known then as the "Script Law." The law provided that laborers should be paid in money and that all contracts to pay or accept wages in other than money should be unlawful. The court, speaking through Mr. Justice Smith, used the following language:

"While it might be desirable and profitable to the employee of such corporation to receive a horse or a cow, or a house and lot in payment for his wages, yet the legislature prohibits payment in that way and places the laborer under guardian-ship, classifying him in respect to freedom of contract with the idiot, the lunatic, or the felon in the penitentiary. It has been sought by some judges to justify legislation of this kind upon the theory that in the exercise of a police power, a limitation necessary for the protection of one class of persons against the persecution of another class may be placed upon freedom of contract. As between persons sui juris, what right has the legislature to assume that one class has the need of protection against the other? In this country the employee of today may be the employer of tomorrow, and laws treating employees as subject for such protective legislation belittle their intelligence and reflect upon their standing as free citizens.

It is our boast that no class distinction exists in this country and interference by the legislature with the freedom of the citizens in making contracts, denying to a part of the people, possessing sound minds and memory, the right to bargain concerning the equivalent

they may desire to receive as compensation for their labor, is to create or carve out a class from the body of the people that places that class within the pale of protective laws which invidiously distinguishes them from other free citizens, thus dividing by arbitrary fiat equally free and intelligent people into distinctive classes or
32 grades—the one marked by law as the object of legislative solicitude, the other not * * * laws which infringe upon the free exercise of commodity or species of property which he may see fit and which he may consider to be the most advantageous is an encroachment upon his constitutional rights and an obstruction to his pursuit of happiness. Such laws as the one under consideration classify him among the incompetents and degrade his calling."

The court cites with approval Tiedeman on Limitations of the Police Power where at Section 178 it is said:

"There can be no constitutional interference by the state in the private relation of master and servant except for the purpose of preventing frauds and trespasses."

In State vs. Wilson, 61 Kans., page 32, the court had before it Chapter 188 of the laws of 1893 entitled "An Act to regulate the weighing of coal at the mine." Mr. Justice Smith wrote the opinion expressing the views of the majority of the court, but dissented, and in his dissenting opinion used the following language:

"It would be a mere affectation of industry to denounce legislation of this kind, infringing upon the right to contract by persons sui juris, like the miners employed by the appellant who, according to the agreed facts, 'are of full age, sound mind, and of full and legal capacity to contract and be contracted with.' The Court of Appeals had no doubt of invalidity of its provisions relating to the regulation of wages. That court said: 'As we have already stated, we should hold this law to be invalid if it in terms expressed such purpose (the regulation of wages) but neither the title of the Act nor the Act itself, directly or indirectly purports to relate to the matter of wages."

Mr. Justice Johnston, who concurred in the majority opinion, contended that the Act did not attempt to regulate wages, but recognizes the correctness of the contention of Mr. Justice Smith in the abstract, when he says:

"The contention is that the statute goes further and interferes with and infringes upon the right to contract and if it did, I would readily agree with my brother Smith, as well as the Court of Appeals, that the Act would be invalid."

33 In the Coffeyville Vitrified Brick & Tile Company v. Perry, 69 Kan., page 297, the court had before it chapter 120 of the laws of 1897 providing that it should be unlawful for any person etc., to discharge any employee because he was a member of a labor union. The court said:

"The right to follow any lawful vocation and to make contracts is as completely within the protection of the constitution as the right to hold property free from unwarranted seizure, or the liberty to go when and where one will. One of the ways of obtaining property is by contract. The right, therefore, to contract cannot be infringed by the legislature without violating the letter and spirit of the constitution. Every person is protected in his right to work where and for whom he will. He may select not only his employer but also his associates. Any Act of the legislature that would undertake to impose on an employer the obligation of keeping in his service one whom for any reason he should not desire, would be a denial of his constitutional rights to make and terminate contracts and to acquire and hold property * * * the position conducted by the defendant was its property and in the exercise of its ownership it is protected by the constitution. It could abandon or discontinue its operation at pleasure. It had the right, beyond the possibility of legislative interference to make any contract with reference thereto not in violation of law. In the operation of its property it may employ such persons as are desirable and discharge without reason those who are undesirable. It is their liberty to contract for the services of persons in any manner that is satisfactory to both. No legislative restriction can be imposed upon the lawful exercise of these rights.

Within the past two decades there has been an epidemic of this class of legislation. New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, Missouri, Wisconsin, Colorado and California have similar statutory provisions and in such states where the constitutionality of these statutes have been before the courts, the law has been universally held to be a denial of the rights guaranteed by the provisions of the national and state constitution."

These and many more have been before this court and this court has never failed to hold that the liberty of contract is still inviolate.

In Coppage vs. Kansas, 236 U. S. 1, the United States Supreme Court had before it an Act of the Legislature of Kansas. The Act in question made it a crime for any one to coerce another to make any agreement not to join, become or remain a member of a labor organization. The state court held that the right to protect the freedom and independence of the employees was within the power of the legislature. The Supreme Court of the United States, however, in an opinion by Mr. Justice Pitney, held that the Statute was contrary to the "due process" clause of the Fourteenth Amendment. The Court said:

"Neither the doctrine nor this application of it is novel; we will endeavor to restate some of the grounds upon which it rests. The principle is fundamental and vital. Included in the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If

this right be struck down or arbitrarily interfered with, there is substantial impairment of liberty in the long established constitutional sense. The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money."

In Section 15 of the Act creating the Court of Industrial Relations it is provided:

"It shall be unlawful for any person, firm or corporation to discharge any employee or to discriminate in any way against any employee because of the fact that any such employee may testify as witness before the Court of Industrial Relations, or shall sign a complaint or shall be in any way instrumental in bringing to the attention of the Court of Industrial Relations any matter of controversy between employers and employees as provided herein."

In the Coppage case it was held that the legislature could not make it a crime for an employer to require an employee to agree not to join a labor union because it deprived him of his liberty and property without due process of law, and the court held that the right to contract with any person for services could not be infringed. How then can we now say that this Act, which makes unlawful for an employer to discharge an employee for particular reason, may be distinguished from the Coppage case and upheld?

In Adair vs. United States, 208 U. S. 161, the court speaking through Mr. Justice Harlan, said (p. 174):

"While, as already suggested, the right of liberty and property guaranteed by the Constitution against deprivation without due process of law is subject to such reasonable restraints as the common good or the general welfare may require, it is not within the functions of government—at least, in the absence of contract between the parties—to compel any person, in the course of his business and against his will, to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another. The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee. It was the legal right of the defendant, Adair—however unwise such a course might have been—to discharge Coppage because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so—however unwise such a course on his part might have been—to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labor organization. In all such particulars the employer and the

ployee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land."

Discussing the above question, the Supreme Court, in the Coppage case said:

"Unless it be overruled, this decision is controlling upon the present controversy; for if Congress is prevented from arbitrary interference with the liberty of the contract because of the 'due process' provision of the Fifth Amendment, it is too clear for argument that the states are prevented from the like interference by virtue of the corresponding clause of the Fourteenth Amendment; and hence if it be unconstitutional for Congress to deprive an employer of liberty or property for threatening an employee with loss of employment or discriminating against him because of his membership in an organization, it is unconstitutional for a state to similarly punish an employer for requiring his employee, as a condition for securing or retaining employment, to agree not to become or remain a member of such an organization while so employed."

36 The court will bear in mind that the Adamson Law decision in the Supreme Court of the United States, correctly styled Wilson vs. New, was by a bare majority of the court, but in the opinion of the majority of the court, delivered by Mr. Chief Justice White, occurs the following paragraph

"However, there is the very broad difference between the two powers exerted. The first, the eight-hour standard, is permanently fixed. The second, the fixing of the wage standard resulting from the prohibition against paying lower wages is expressly limited to the time specified in Section Two. It is, therefore, not permanent but temporary, leaving the employers and employees free as to the subject of wages to govern their relations by their own agreements after the specified time. Concretely stated, therefore, the question is this: Did Congress have power, under the circumstances stated, that is in dealing with the dispute between the employers and employees, as to wages, to provide a permanent eight-hour standard and to create by legislative action a standard of wages to be operative upon the employers and employees for such reasonable time as it deems necessary to afford an opportunity for the meeting of the minds of employer and employee upon the subject of wages? Or, in other words, did it have the power in order to prevent the eruption of interstate commerce to exert its will to supply the absence of a wage scale resulting from the disagreement as to wages between the employers and employees and to make its will on that subject controlling for the period provided for?"

This is the question for decision according to the chief justice, and his opinion is rendered in a case where the interests of the public were so great that it was said that the very existence of the Republic itself was jeopardized. The decision was rendered at a time when there

was threat of a complete paralyzation of all the means of transpor
tion by rail in the land, and at a time when those who knew the i
ternational situation realized that a great war was imminent. C
tainly never in the history of any nation was there a situation wh
the interests of the public in any law was greater and more pla
and yet the Supreme Court of the United States, even in that tryi
circumstance, declined to deprive its citizenry of the constitution
right to contract concerning this labor which the Court of Ind
trial Relations Law seeks to sweep aside, when an emergen
37 that has passed presents an opportunity for the politician
gain momentary popular acclaim.

McLane vs. Arkansas, 211 U. S. 539, cited by the attorney gene
in his brief, upholds a statute of the state of Arkansas.

The act in question in the McLane case is not at all similar
the act under consideration in the case at bar. That act is in pa
as follows:

"It shall be unlawful for any mine owner, lessee or operator
coal mines in this state, where ten or more men are employed und
ground, employing miners at bushel or ton rates, or other quali
to pass the output of coal mined by said miners over any screen
any other device which shall take any part from the value there
before the same shall have been weighed and duly credited to t
employee sending the same to the surface and accounted for at
legal rate of weights, fixed by the laws of Arkansas."

In the above case the attempt to regulate contracts for wages w
not made. A certain definite industry was designated and an ar
trary line was fixed, so that the public right was not declared to b
affected by the operation of any part of the industry, but only to suc
part of said industry that was of sufficient size and importance
be reasonably affected with the public interest.

The United States Supreme Court did not, as the attorney gene
claims, decide that the mining industry as an industry was a
fected with a public interest. That question was not before the co
in the McLane case. That act in that case merely protected men wh
happened to be miners from the fraudulent practice of she
weighing.

In the Stettler vs. O'Hara case, 69 Ore. 519, 139 Pac. 743, t
Supreme Court of Oregon had before it a law authorizing the I
dustrial Welfare Commission to fix minimum wages and maximu
hours of labor for women, and the court in sustaining the legisl
tion quotes with approval the opinion of Mr. Justice Brewer in Mu
ler vs. Oregon, 208 U. S. 412. This was an appeal from th
38 Oregon Supreme Court questioning the constitutionality
the law fixing the maximum hours of labor for women. Th
court said:

"Differentiated by these matters from the other sex, she is pro
erly placed in a class by herself, and the legislation designed for h
protection may be sustained, even when like legislation is not nec
sary for men and could not be sustained. It is impossible to clo

one's eyes to the fact that she still looks to her brother and depends upon him."

Never in any of the decided cases have the courts held that it was right in the legislature to interfere with that liberty of the workman by which he sells, at best advantage, his skill and strength. Bearing in mind that this right has never been successfully infringed, even in those cases where the public interest was most clear, we come now to a consideration of the great underlying vital question in this case: Are the employments and industries brought under the jurisdiction of the Court of Industrial Relations by this law affected with a public interest of such nature and degree as to warrant legislative interference of this broad character?

The courts have universally refused to adopt any definite rule or measure by which the police power of the state may be definitely measured. They have held that each case must, in this respect, rest largely upon its own merits and be decided according to all of the circumstances surrounding it. As long as these circumstances and conditions vary the police power must continue to be elastic.

What limit can be imagined to the exercise of this power by the Legislature of Kansas that has not been transcended by this act?

The Court of Industrial Relations has jurisdiction over anyone engaged in the manufacture or preparation of food products in any stage of the process. Second, the manufacture of clothing and all manner of wearing apparel in any stage of the process. Third, the mining or production of any substance in common use, as fuel, either for domestic manufacturing or transportation purposes. Fourth, the transportation of all the articles aforementioned. Fifth, all public utilities.

Wherefore, to the end that a further consideration may be given to previous decisions which have hitherto been overlooked, inadvertently, by this court, and by counsel, the defendants pray that this petition for rehearing may be granted and that said cause shall be set down for a hearing under such terms as this court shall direct, and for such other and further relief as may be just.

PHIL CALLERY,
REDMOND S. BRENNAN,
Attorneys for Appellant.

[Endorsed:] In the Supreme Court of the State of Kansas. State of Kansas et al., vs. Alexander Howat et al. Petition for Rehearing. Filed July 1, 1921. D. A. Valentine, Clerk Supreme Court. Redmond S. Brennan & Phil. H. Callery, Attorneys for Appellants.

Be it further remembered that afterwards on the 7th day of July, 1921, the same being one of the regular judicial days of the Supreme Court of the State of Kansas, said court being in session in its court room in the city of Topeka, the following proceedings among others was had, and remains of record in the words, and figures as follows, to-wit:

42 In the Supreme Court of the State of Kansas, Thursday, June 7, 1921.

No. 23505.

THE STATE OF KANSAS ex Rel., Appellee,

v.

ALEXANDER HOWAT et al., Appellants.

Journal Entry Denying Petition for Rehearing.

Now comes on for decision the petition for a rehearing of said cause, and thereupon it is ordered that said Petition for a Rehearing be denied.

43 In the Supreme Court of the State of Kansas.

No. 23505.

THE STATE OF KANSAS on the Relation of RICHARD J. HOPKINS, Attorney General, and C. A. Burnett, County attorney, in and for Crawford County, Kansas, Appellee

v.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, ROBERT B. Foster, James M. Ilwrath, John Fleming, Willard Tate, Thomas Cunningham, The United Mine Workers of America, a Voluntary Association of Labor Unions; Also Officers of Local Union of said United Mine Workers of America of District No. 14 et al., Appellants.

I, D. A. Valentine, Clerk of the Supreme Court of the State of Kansas, do hereby certify that the above and foregoing is a true, full and complete transcript of the record and proceedings had in the above entitled case, and also of the opinion of the court rendered thereon as the same appear on file and remain of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Topeka, Kansas, this 1st day of August, A. D. 1921.

[Seal of Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk of the Supreme Court
of the State of Kansas.

Here follows;

The Original Petition for a Writ of Error.

The Original Assignments of Error.

The Order allowing the Writ of Error and fixing the amount of Bond for appeal at Ten Thousand Dollars.

A Copy of the Bond for Appeal.

The Original Writ of Error.

The Original Citation, together with the acknowledgement of ice thereof.

In the Supreme Court of the United States.

XANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, JAMES Mellwrath, John Fleming, Willard Titus, Thomas Cunningham, Hearl Maxwell, and Amos Standering, Plaintiffs in Error.

vs.

STATE OF KANSAS, Defendant in Error.

Petition for Writ of Error.

ow come Alexander Howat, August Dorchy, Thomas Harvey, es Mellwrath, John Fleming, Willard Titus, Thomas Cunning- , Hearl Maxwell and Amos Standering and report that on the day of June, 1921, a final judgment was duly entered by the reme Court of the State of Kansas affirming the judgment and ence entered by the District Court of Crawford County, Kansas, proceeding wherein the State of Kansas, upon the relation of ard J. Hopkins, Attorney General of the State of Kansas, and . Barnett, County Attorney in and for Crawford County, Kansas, plaintiff, against Alexander Howat, August Dorchy, Thomas vey, James Mellwrath, John Fleming, Willard Titus, Thomas ningham, Hearl Maxwell and Amos Standering were defendants, h judgment and sentence was in favor of the plaintiff and nst the defendants.

hat this action was brought against the defendants as being in empt of an order of the District Court of Crawford County com- ding said defendants to refrain from the doing of certain acts permanently enjoining said defendants from calling strikes in us mines in the State of Kansas, and in general from violating any of the provisions of the act known as the Court of Industrial Relations act.

The plaintiffs in error herein are officers of the United Workers of America, an association commonly known as a union. The plaintiffs in error in their answer in said cause he District Court of Crawford County averred that the proceed- was a violation of the constitutional rights of these plaintiffs in as guaranteed by both the State and Federal Constitution, and ed that the act creating the Court of Industrial Relations, which e act above referred to, and the proceeding being resorted to in ause, violated the constitutional right and privilege guaranteed

in and by the fourteenth amendment to the Constitution of the United States, as well as the fifth amendment of the Constitution of the United States, and also deprived these plaintiffs in error of their liberty and property without due process of law and abridged their privileges and immunities as citizens of the United States.

And your petitioners aver that in their answer and defense made to the accusation of the defendant in error they expressly charged that they had the constitutional right and privilege aforesaid and that the action of the defendant in error was illegal and unlawful, in that it compelled the plaintiffs in error herein to submit to the operation of a law of the State of Kansas which law, because it contravened the provisions of the State as well as the Federal Constitution, was unconstitutional and void.

Your petitioners further aver that in their answer and defense made to the accusation of the defendant in error they expressly charged that the act creating the Court of Industrial Relations was in violation of the Constitution of the United States, and therefore unconstitutional and void, for the reason that in the
47 powers conferred upon said court by said legislative enactment, legislative, judicial and administrative functions are commingled and interwoven in a manner violative of the constitutional requirement that the three great departments of the Government, namely, the legislative, executive and judicial departments and the powers and duties of each, be independently exercised and separately maintained.

Your petitioners further aver that said act is unconstitutional and void for the reason that said legislative enactment violates Section Twenty-one of Article Four of the Constitution of the United States.

Your petitioners further aver that in their answer and defense made to the accusation of the defendant in error it is set up that the Court of Industrial Relations act violated Article One of the Amendments to the Constitution of the United States known as the First Amendment.

Your petitioners further aver that said act is violative of Section One of Article Thirteen of the Constitution of the United States and that such contention was expressly made by these defendants in their defense to said accusation. That in said suit your petitioners claimed the rights, privileges and immunities hereinabove set forth. That notwithstanding these facts the Supreme Court of the State of Kansas decided against the rights, privileges and immunities thus specified, set forth and claimed by these petitioners. And your petitioners show that the judgment and decision and interpretation of the Constitution of the United States and of the Federal Statutes enacted under the provisions of said Constitution and the denial to them of their right of freedom of speech, personal liberty and freedom of contract, as herein claimed, was and is repugnant to and contravenes the Constitution and laws of the United States of America.

Your petitioners further show that the Supreme Court of
48 the State of Kansas is the highest court in said State to which this cause may or might be taken, and your petitioners

urther aver that in the aforesaid judgment and proceeding certain rror were committed to the prejudice of your petitioners, all of hich will more fully appear from the Assignment of Errors which filed herein.

Wherefore, your petitioners pray that a writ of error from the upreme Court of the United States may issue in this case to the upreme Court of the State of Kansas, for the correction of errors complained of, and that a transcript of the record and proceedings nd papers in this cause, duly authenticated by the Clerk of the upreme Court of the State of Kansas, may be sent to the Supreme ourt of the United States, as provided by law.

REDMOND S. BRENNAN,
Attorney for Petitioners and Plaintiffs in Error.

[Endorsed] 23505 Alexander Howat, et al., vs. State of Kansas. Petition for Writ of Error. Filed Jul 7 1921 . A. Valentine, Clerk Supreme Court.

In the Supreme Court of the United States.

LEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, JAMES McIlwrath, John Fleming, Willard Titus, Thomas Cunningham, Hearl Maxwell, and Amos Standering, Plaintiffs in Error,

vs.

THE STATE OF KANSAS, Defendant in Error.

Assignment of Errors.

Now come Alexander Howat, August Dorchy, Thomas Harvey, mes McIlwrath, John Fleming, Willard Titus, Thomas Cunningm, Hearl Maxwell and Amos Standering, petitioners and plainfs in error, by Redmond S. Brennan and ——— ———, their attorys, and in connection with their petition for writ of error show at in the record and proceedings and in the rendering of the dgment and decision of the Supreme Court of the State of Kans in the above entitled cause manifest error has intervened to the ejudice of these petitioners and plaintiffs in error, in this, to-wit:

I.

That the Supreme Court of the State of Kansas erred in affirming e decree of the District Court of Crawford County, Kansas, and ecting that the decree and sentence of said District Court be car- d into force and effect because said decision of the Supreme Court the State of Kansas, as aforesaid, deprives the plaintiffs in error of their rights of personal liberty and freedom of contract, as guaranteed by the Fourteenth Amendment to the Constitu- -ion of the United States, in that by said decisions of the onorable Supreme Court of the State of Kansas it was held that umerous invalid sections of said Industrial Court Act did not de-

stroy or render invalid the whole act, which decision is in confli with previous decisions of the State of Kansas and the Federal cou of the United States. Therefore the Supreme Court erred in hol ing that the decision of the District Court of the State of Kansas d not violate the Fourteenth Amendment of the Constitution of t United States or the laws of the United States.

II.

The Supreme Court of the State of Kansas in its decision in t above-entitled cause erred in holding that the violation of said I dustrial Court act of the Constitution of the United States and t Federal statutes did not invalidate the whole of said law and err by such decision and refusal to pass upon the validity or invalidi of the whole act.

III.

The decision of the Supreme Court of the State of Kansas, erroneous, in that said decision is in conflict with and violates t provisions of the Act of Congress of October 15, 1914, 38 U. S Statutes, 738 (the Clayton Act), which act makes peaceful picke ing lawful. Whereas, by the aforesaid decision of the Supre Court of the State of Kansas the provisions of the Industrial Co act denying the right to peaceful picket is upheld.

IV.

52 The decision of the Supreme Court of the State of Kans in the aforesaid cause is erroneous for the reason that t power vested in the Industrial Court by the said Industri Court act is an encroachment upon the power vested in the Unit States Government to regulate and control the production and d tribution of food and fuel under the Lever Act, is by said decisi upheld and maintained.

V.

The decision of the Supreme Court of the State of Kansas is e roneous in that said decision is at variance with the decisions of t highest courts of the states, and the federal appellate courts, as the right of the legislature to interfere with personal liberty, reg lation of wages and freedom of contract, under their constitutio and the Constitution of the United States, which questions are such general importance throughout the land as to merit review a determination by the Supreme Court of the United States.

VI.

The decision of the Supreme Court of the State of Kansas is e roneous for the reason that it violates Section One of Article 13 the Amendment to the Constitution of the United States, known a **the 13th Amendment.**

VII.

The decision of the Supreme Court of the State of Kansas is erroneous for the reason that said decision is in conflict with and violates Section One of Article 15 of the Amendments to the Constitution of the United States, known as the 15th Amendment, and thereby violates the rights guaranteed to these plaintiffs in error by said Constitutional provisions.

VIII.

The decision of the Supreme Court of the State of Kansas is erroneous in that it decides that the commingling of the legislative, executive and judicial powers of government in one body, does not thereby render the act creating said body unlawful, illegal and unconstitutional, which decision is grossly prejudicial to the rights of these plaintiffs in error, which rights are guaranteed under the Constitution of the United States and the form of government established thereby.

IX.

The decision of the Supreme Court of the State of Kansas is erroneous and an encroachment on the constitutional rights of these petitioners because such decision upholds an order of a court of the State of Kansas commanding these petitioners to obey the statute of said State, which statute is unconstitutional and void, and said order was therefore a violation of a constitutional right of plaintiffs in error.

X.

The Supreme Court of the State of Kansas erred in deciding that the constitutional rights of these petitioners under the Constitution of the United States were not brought into question in the instant case.

[Endorsed:] 23505. Alexander Howat, et al., vs. The State of Kansas. Assignment of Errors. Filed Jul. 7, 1921. A. Valentine, Clerk Supreme Court.

55 In the Supreme Court of the United States

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, JAM
McILWRATH, JOHN FLEMING, WILLARD TITUS, THOMAS CUNNINGHA
HEARL MAXWELL, and AMOS STANDERING, Plaintiffs in Error

vs.

THE STATE OF KANSAS, Defendant in Error

Order Allowing Writ of Error

On the reading of the petition of Alexander Howat, Au
Dorchy, Thomas Harvey, James McIlwrath, John Fleming, Will
Titus, Thomas Cunningham, Hearl Maxwell and Amos Stander
plaintiffs in error for a writ of error and assignment of error a
upon due consideration of the record of said cause

It is ordered that a writ of error be allowed from the Supre
Court of the United States as prayed for in said petition and that s
writ of error and citation thereon be issued, served and returned to
Supreme Court of the United States in accordance with law a
condition that the said petitioners and plaintiffs in error Alexan
Howat, August Dorchy, Thomas Harvey, James McIlwrath, J
Fleming, Willard Titus, Thomas Cunningham, Hearl Maxwell
Amos Standering, give security in the sum of Ten Thousand ($
000.00) Dollars, that any of said plaintiffs in error and each
every of them shall prosecute said writ of error to effect and if s
plaintiffs in error fail to make their said plea good, shall answ
the defendant in error for all costs and damages that ma
56 adjudged or decreed on account of said writ of error

And the said plaintiffs in error now presenting a bon
the sum of Ten Thousand ($10,000.00) Dollars with the Un
States Fidelity & Deposit Company of Maryland as surety
ordered that the same be and is hereby duly approved

In witness whereof I have hereunto set my hand this 4th da
July 1921

W. A. JOHNSTON
Chief Justice of the Supreme
Court of the State of Kansa

57 [Endorsed] Alexander Howat, et al. vs. The State of K
sas Order allowing writ of error

38 In the Supreme Court of the State of Kansas.

Case No.

THE STATE OF KANSAS on the Relation of Richard J. Hopkins, Attorney General of the State of Kansas, and C. A. Burnett, County Attorney of Crawford County, Kansas, Plaintiffs,

v.

ALEXANDER HOWAT, AUGUST DORCHY, JAMES MCELWRAITH, JOHN FLEMING, WILLARD TITUS and HEARL MAXWELL, Defendants.

Stay Bond.

Know all men by these presents, that the undersigned Alexander Howat, August Dorchy, James McElwraith, John Fleming, Willard Titus and Hearl Maxwell, defendants herein, and P. J. McGinley, and Chas. Maroon, as sureties, residents of Crawford County, Kansas hereby acknowledge ourselves firmly bound and indebted to the state of Kansas in the penal sum of Ten Thousand ($10,000.00) Dollars, for the payment of which we bind ourselves, our heirs, executors and administrators.

The conditions of this undertaking and obligation are such that, whereas, the said above named defendants have been convicted in the District Court of Crawford County, Kansas, of contempt of Court, as charged in the accusation filed in said case, and have been sentenced by said Court upon said conviction, and whereas, the said above named defendants appealed from the decision, judgment and sentence ordered against said above named defendants in said cause to the Supreme Court of the State of Kansas, and whereas, the Supreme Court of Kansas affirmed the decision of the said District Court of Crawford County, Kansas, and whereas, said defendants desire to appeal from the decision of the Supreme Court of Kansas to the Supreme Court of the United States.

Now, therefore, if the said above named defendants, shall well ad truly appeal said case and diligently according to law prosecute said appeal to a final termination in the Supreme Court of the United States, and abide the orders, decision and judgment of the Court, then and in that event, this bond shall be null and void, otherwise to remain in full force and effect.

Witness our hands this 22nd day of July, 1921.

ALEXANDER HOWAT,
Principal
AUGUST DORCHY,
Principal
JAMES McILWRAITH,
Principal
JOHN FLEMING,
Principal
WILLARD TITUS,
Principal
HEARL MAXWELL,
Principal
59 P. J. McGINLEY,
Surety
CHAS. MAROON,
Surety

STATE OF KANSAS,
Crawford County, ss.

We, the undersigned, do solemnly swear that we are each residents of Crawford County, Kansas, and that we are each worth Five Thousand ($5,000.00) Dollars over and above all debts, exemptions and liabilities, so help us God.

P. J. McGINLEY,
Surety
[SEAL.] CHAS. MAROON,
Surety

Subscribed and sworn to before me this 22nd day of July, 1921.

B. VERCOGLIO,
Notary Public

My commission expires Dec. 5, 1923.

The above bond approved by me this 1st day of August, 1921.

JUDSON S. WEST,
Justice

Indorsed: The State of Kansas, ex rel., Plaintiff, v. Alexander Howat et al., Defendants. Stay Bond. Filed, July 25th, 1921. D. A. Valentine, Clerk Supreme Court.

60 In the Supreme Court of the United States.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, JAMES McILWRATH, JOHN FLEMING, WILLARD TITUS, THOMAS CUNNINGHAM, HEARL MAXWELL, and JAMES STANDERING, Plaintiffs in Error,

vs.

THE STATE OF KANSAS, Defendant in Error.

THE UNITED STATES OF AMERICA:

The President of the United States of America to the Honorable Justices of the Supreme Court of the State of Kansas, Greetings:

Because in the record and proceedings as also in the rendition of the judgment of the plea which is in said Supreme Court of the State of Kansas before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in said suit between Alexander Howat, August Dorchy, Thomas Harvey, James McIlwrath, John Fleming, Willard Titus, Thomas Cunningham, Hearl Maxwell and Amos Standering, appellants, vs. the State of Kansas, appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and a decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty or
61 statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said constitution, treaty, statute or commission; a manifest error hath happened to the great damage of the said Alexander Howat, August Dorchy, Thomas Harvey, James McIlwrath, John Fleming, Willard Titus, Thomas Cunningham, Hearl Maxwell and James Standering, appellants, as by said complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, do send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this Writ so that you may have the same in said Supreme Court in Washington, within 30 days from the time hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Joseph McKenna, Senior Associate Jus
of the Supreme Court of the United States, the 8th day of July,
the year of our Lord One Thousand Nine Hundred and Twenty-o

[Seal of the District Court, U. S., District of Kansas.]

H. CAMPBELL,
Clerk United States District Court
for the District of Kansas

62 [Endorsed:] Alexander Howat et al. vs. The State of K
sas. Writ of Error. Filed Jul. 8, 1921. D. A. Valent
Clerk Supreme Court.

63 United States of America to Richard J. Hopkins, Attor
General of the State of Kansas, Greeting:

You are hereby cited and admonished to be and appear at the
preme Court of the United States at Washington within thirty
days from the date hereof, pursuant to a writ of error filed in
Clerk's office of the Supreme Court of the State of Kansas whe
Alexander Howat, August Dorchy, Thomas Harvey, James W
wrath, John Fleming, Willard Titus, Thomas Cunningham, H
Maxwell and James Standering, appellants, are plaintiffs in e
and the State of Kansas, appellee, is defendant in error, to s
cause, if any there be, why the judgment rendered against the
plaintiffs in error, as in the said writ of error mentioned, should
be corrected, and why speedy justice should not be done to
parties in that behalf.

Witness the Honorable William A. Johnston, Chief Justice of
Supreme Court of the State of Kansas, this 7th day of July, in
year of Our Lord One Thousand Nine Hundred and Twenty-on

W. A. JOHNSTON,
Chief Justice of the Supreme
Court of the State of Kans

I hereby acknowledge service of above and foregoing citation
8th day of July 1921.

RICHARD J. HOPKINS,
Atty. G

64 [Endorsed:] 23505. Alexander Howat et al. vs. The
of Kansas. Citation. Filed Jul. 8, 1921. D. A. V
tine, Clerk Supreme Court.

65 STATE OF KANSAS, ss.

Supreme Court.

I, D. A. Valentine, Clerk of the Supreme Court of the St
Kansas do hereby certify that there was lodged with me as Cle
the Supreme Court of the State of Kansas, on July 7th 1921, t
above entitled case.—

1. The Original Bond for Appeal of which a copy is herein set forth, and

2. Two copies of the Writ of Error as herein set forth, one for the Appellee and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court of the State of Kansas, in the city of Topeka, this 1st day of August, A. D. 1921.

[Seal of the Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk of the Supreme Court
of the State of Kansas.

55 UNITED STATES OF AMERICA }

Supreme Court of Kansas.

In obedience to the commands of this writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said Supreme Court of Kansas, in the City of Topeka, this 1st day of August, A. D. 1921.

[Seal of the Supreme Court, State of Kansas.]

D. A. VALENTINE,
Clerk of the Supreme Court
of the State of Kansas.

Endorsed on cover: File No. 28,446. Kansas Supreme Court, Term No. 491. Alexander Howat, August Dorchy, Thomas Harvey et al., plaintiffs in error, vs. The State of Kansas. Filed August 24th, 1921. File No. 28,446.

Office Supreme Court, U.S.
FILED
FEB 9 1922
WM. R. STANSBURY, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921, No. 154.

(Was No. 587, October Term, 1920.)

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, AND ROBERT D. FOSTER, PLAINTIFFS IN ERROR,

vs.

THE STATE OF KANSAS, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

BRIEF OF PLAINTIFFS IN ERROR.

REDMOND S. BRENNAN,
Commerce Building,
Kansas City, Missouri;
JOHN F. McCARRON,
Woodward Building,
Washington, D. C.;
FRANK BONER HEGERTY,
Commerce Building,
Kansas City, Missouri,
Attorneys for Plaintiffs in Error.

(27,944)

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that where the Federal Government has exercised control in cases within its jurisdiction, that the State, although at liberty to legislate prior to the assumption of control by the Federal Government, is thereafter precluded. The act in question contravenes the Clayton Act (38 Statutes at Large, 738) and the Lever Act (Act of August 10, 1917), as shown by the following. 51

Point 9. The Kansas Court of Industrial Relations Act is void as an abridgement of the privileges and immunities of the citizens of the United States as guaranteed under the Federal Constitution. 55

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921, No. 154.

(Was No. 587, October Term, 1920.)

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, AND ROBERT D. FOSTER, PLAINTIFFS IN ERROR,

vs.

THE STATE OF KANSAS, DEFENDANT IN ERROR.

ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

BRIEF OF PLAINTIFFS IN ERROR.

STATEMENT.

The cause herein comes to this court on writ of or to the Supreme Court of the State of Kansas. n January of 1920, the legislature of the State Kansas enacted what is known as the Court of ustrial Relations Act; Chapter 29, Special ion Laws of 1920. Said act is set forth in full

in the addendum to this brief. (The act has since been amended, Kansas Session Laws of 1921, as set out in the addendum hereto, by creating a Public Utilities Commission and transferring the administration of the act as to regulation of public utilities thereto.)

Under date of March 27, 1920, subpoenas were issued by the Court of Industrial Relations, directing the plaintiffs in error to appear on March 29, 1920, at Pittsburg, Crawford County, Kansas, and give their testimony in an investigation and controversy between employers and employees relating to working conditions in the coal mines of Cherokee and Crawford counties, Kansas, with reference to hours of labor, provisions for safety and sanitary conditions; miners' incomes with relation to living costs; plan of mining operation as to:

(*a*) continuity of production;

(*b*) if continual operation is impracticable, then a schedule which will work to the advantage of the miners as to alternative employments at certain seasons of the year;

(*c*) will be to the advantage of the public as insuring an adequate supply of fuel; and

(*d*) provide for a fair return of the capital used and useful in industry; also with reference to the supply of coal for future years and the cost of mining and production as compared with previous

years; housing, rents and other matters affecting the living conditions of the miners and their families; school and church privileges, and general social surroundings; such complaints as are made by mine workers and the general public, and complaints on behalf of the general public as may be presented by the Attorney General or other public officers; said investigation and hearing is based upon said Court of Industrial Relations statute (Rec., pp. 3-4).

The plaintiffs in error did not appear before said Court of Industrial Relations.

On April 6, 1920, the Attorney General of Kansas applied to the District Court of Crawford County for an order requiring the plaintiffs in error to forthwith appear and testify before said Court of Industrial Relations (Rec., pp. 1, 2, 3). No notice or hearing of any nature whatsoever was given or permitted to plaintiffs in error. Said order as applied for, was granted instanter, in an *ex parte* manner (Rec., p. 5). On the very same day, April 6, 1920, the Attorney General of the State of Kansas filed an affidavit and accusation (Rec., p. 6-9) in said District Court of Crawford County, charging plaintiffs in error with contempt of the order of the District Judge of Crawford County and conspiracy to violate same to which accusation plaintiffs in error filed 23 specifications in their answer as allowed by the Kansas Code, denying each and all of the material allegations contained in the accusation filed by the Attorney Gen-

eral. The first 11 specifications denied the valid existence of the Court of Industrial Relations under the constitution and laws of the State of Kansas, while specifications 12 to 18, inclusive, set up a violation of the Federal constitutional rights of the plaintiffs in error (Rec., pp. 13-16). The specifications filed in the District Court dealing with the Federal questions have been set forth heretofore by plaintiffs in error in their answer to defendants' in error motion to dismiss filed in this cause.

Upon the issues being joined, and hearing held April 9, 1920, the court rendered a decision, April 9, 1920, holding the plaintiffs in error in contempt, and an order was made by said court, directing plaintiffs in error to pay costs and committing them to the jail of Crawford County, Kansas, until they shall submit to be sworn and testify in said Court of Industrial Relations (Rec., pp. 23-24).

Motion was made for a new trial on April 10, 1920, which motion was heard by the District Court of Crawford County and overruled and said plaintiffs in error excepted to said ruling (Rec., pp. 25-26-27).

Plaintiffs in error were forthwith committed to jail (Rec., pp. 17 to 21, inclusive).

On April 16, 1920, plaintiffs in error appealed to the Supreme Court of Kansas from the decision of the District Court of Crawford County. Upon furnishing supersedeas bond they were released from jail pending decision on the appeal (Rec.

pp. 32 to 34, inclusive). The cause was heard by said Supreme Court of Kansas on July 6, 1920 (Rec., pp. 84-85). In said Supreme Court plaintiffs in error again pressed with earnestness their Federal constitutional rights, both by oral argument and brief. On July 19, 1920, a decision was rendered by said Supreme Court, affirming the decision of the lower court, and sustaining the validity of the Court of Industrial Relations Act (Rec., pp. 86-94); *State ex rel. v. Howat*, 107 Kansas, 123; 191 Pac., 585. In said decision of the Supreme Court of the State of Kansas, a number of the Federal questions raised were passed upon by said court adversely to claim of plaintiffs in error (Rec., 93-94).

Under date of August 9, 1920, petition for rehearing (Rec., 95 to 114, inclusive), in said cause was filed in the Supreme Court of the State of Kansas and said petition for rehearing was denied on September 1, 1920 (Rec., p. 115).

Under date of September 9, 1920, petition for writ of error was filed (Rec., p. 119), and assignment of errors filed on the same day, again stressing Federal and statutory points in the Supreme Court of Kansas by plaintiffs in error, and on said date, the Chief Justice of the Supreme Court of Kansas signed an order allowing a writ of error to the Supreme Court of the United States (Rec., p. 122).

Specification of Errors.

The plaintiffs in error claim that the Supreme Court of the State of Kansas erred in affirming the judgment of the District Court of Crawford County, Kansas, in refusing to declare that Chapter 29, Kansas Special Session Laws 1920, is void, as against the rights and remedies of the plaintiffs in error for the following reasons:

First. The order of the District Court of Crawford County, Kansas, directing plaintiffs in error to forthwith appear and testify before the Court of Industrial Relations is *void*, and the judgment of contempt for ignoring said order is therefore void, as a denial of due process as guaranteed to plaintiffs in error by the 14th amendment to the Constitution of the United States because:

(*a*) The District Court was without jurisdiction to issue said order. The order (Tr., 5), sought to compel attendance and testimony before the Court of Industrial Relations. There is no inherent power in said District Court to issue such an order, and there is no constitutional or statutory provision in the State of Kansas conferring such power or directing any such procedure as was had in this cause.

(*b*) Said order was issued against plaintiffs in error without any notice or hearing being given.

(*c*) It directed plaintiffs in error to appear before a court or body that did not exist. The Court

Industrial Relations had no legal existence, the
seeking to create it being void as contravening
13th and 14th amendments to the U. S. Con-
tution as stated herein below in 12 points, and as
re particularly specified in the assignment of
ors herein (Tr., 119).

d) The application (Tr., 2) for said order was
ufficient and illegal, as an attempt to have pun-
ment visited upon plaintiffs in error for con-
pt of the Court of Industrial Relations in viola-
of the 14th amendment.

ARGUMENT.

POINT I.

Writ of Error Lies to Supreme Court of Kansas.

At the outset, we direct the Court's attention to the fact, that this case is here on writ of error.

The defendant in error has presented its motion to dismiss the writ of error on the ground that no Federal question is involved; to which motion plaintiffs in error strongly dissent. We submit that plaintiffs in error have properly raised in the State courts the Federal questions which show a violation of their rights as citizens of the United States, as is shown by the record in this case (Rec., pp. 14-15; 100-101-103-104; 114).

Plaintiffs in error in the District Court of Crawford County, Kansas, properly questioned the validity of the Court of Industrial Relations Statute by setting forth seven of their twenty-three specifications filed by said plaintiffs in error to the accusation of contempt brought against them by the State of Kansas through it attorney-general on behalf of the Court of Industrial Relations, in which they deny the violation of any valid order of said court and assert their claim of Federal rights as citizens of the United States and the violation of same by the Court of Industrial Relations Act (Rec., pp. 14-15).

The plaintiffs in error upon being subpœnaed

to appear before said Court of Industrial Relations in a controversy and an Investigation and Hearing were immediately placed in jeopardy of their Federal constitutional rights. The application of the Court of Industrial Relations Act had been applied to them in their peaceful occupations as citizens of the United States for that court had directed to them a subpoena requiring them to appear and testify in a controversy and hearing in relation to matters set up in the "Notice of Inquiry and Hearing" (Rec., pp. 3-4), by reason of said matters the said Court of Industrial Relations attempted to acquire jurisdiction of the plaintiffs in error contrary to the guarantees of the Federal Constitution. The plaintiffs in error, therefore, refused to obey the subpoena of the said Court of Industrial Relations. Did the Court of Industrial Relations cite them for contempt because of their refusal to obey its subpoena? No. It went into the District Court of Crawford County, Kansas, and asked and obtained from that court an order and no hearing was granted plaintiffs in error before said order was issued directing the plaintiffs in error to forthwith appear before said Court of Industrial Relations and there give testimony as there required. Plaintiffs in error did not appear before the Court of Industrial Relations. An accusation charging contempt was then filed in the District Court by the Attorney General (Rec., pp. 1-2-3). Plaintiffs in error answered (Rec., pp. 13-14-15-16), denying any contempt and affirm-

atively setting up violations of their Federal Constitutional Rights, among other defenses.

In no uncertain language the clear claim of their Federal Constitutional Rights was made (Rec., pp. 14-15).

Upon the issues being joined and verdict had by the District Court of Crawford County adjudging plaintiffs in error in contempt an appeal was taken from the adverse decision of said court, to the Supreme Court of Kansas, the court of last resort in that State. The plaintiffs in error again pressed with earnestness their Federal rights before that court (Rec., pp. 95 to 115).

The sentence of the District Court was affirmed by the Supreme Court of Kansas and the statute in question held to be valid. Passing upon the Federal questions therein, the court said:

> "It is urged the following provisions of the act are invalid for the reasons indicated:
>
> "That authorizing the court of industrial relations to modify the terms of contracts of employment which are found to be unfair, unjust or unreasonable (sec. 9), because it violates the 14th amendment to the Federal Constitution.
>
> "That forbidding the discharge of an employee because of his testifying before the court of industrial relations, or bringing to its attention any matter of contro

versy between employers and employees (sec. 15), for the same reason;

"That requiring employers to keep a record of wages paid (sec. 23), for the same reason;

"That forbidding employees to conspire to quit their employment for the purpose of interfering with the operation of the industry (sec. 17), for the same reason;

"That forbidding a conspiracy to do injury to others by picketing on account of anything done by the court of industrial relations, or under its orders, or of its aid having been invoked (sec. 15), because it involves a denial of free speech.

"We think it obvious that none of these matters are involved in the present case.

"Finally it is contended that the act is void as an attempt to interfere in matters of purely Federal jurisdiction; that the National Government has so fully occupied the ground attempted to be covered by the industrial court law that there is no field left in which the latter may operate. The agencies which the defendants regard as bringing about this result are:

"The entrance into an interstate contract between the international officers of the United Mine Workers of America and the representatives of the Coal Operators Association of the United States at the conclusion of the coal strike a little over six months ago;

"The appointment by the president of a commission to hear and determine matters

of hours, wages and conditions in the mining industry in the United States;

"The Clayton Act (39 U. S. St. at L., 730), relating to unlawful restraints and monopolies in interstate commerce, particularly the portion thereof (sec. 20) which forbids Federal courts to grant injunctions against certain conduct of employees, of which ceasing to perform work is an illustration, and which declares that such conduct shall not be held to be violative of any law of the United States;

"The Lever Act (40 U. S. St. at L., 276), providing for governmental control of the production and distribution of food and fuel until the termination of the war.

"It is quite possible that the scope of the authority of the court of industrial relations may be limited in some respects by these agencies—that a particular order made by that body might be found to be ineffective, for instance, because in conflict with some lawful order of a Federal officer or body, or because constituting an undue interference with interstate commerce. We think it too clear to require elaboration that whatever restrictions may thus be placed on local action it cannot be true that the State has no power to conduct investigations along at least some of the lines indicated and to attempt the remedy of certain classes of abuses that may be found to exist" (Rec., pp. 93-94).

A petition for rehearing was denied (Rec., p. 115) and the plaintiffs in error then filed their pe-

tition for writ of error and assignment of errors (Rec., pp. 116 to 122, inclusive). Order allowing writ of error was granted (Rec., p. 122).

In Saunders *v.* Shaw, 244 U. S., 317, 320, this court said:

> "It appears that shortly after the Supreme Court had declined to entertain the petition for rehearing the plaintiff in error brought the claim of constitutional right to the attention of the chief justice of the State by his assignment of errors. We do not see what more he could have done."

In the case of Green Bay & M. Canal Co. *v.* Patten Paper Company, 172 U. S., 58, 68, it was therein held:

> "But no particular form of words or phrases has ever been declared necessary in which the claim of Federal rights must be asserted. It is sufficient if it appears from the record that such rights were specially set up or claimed in the State court in such manner as to bring it to the attention of that court."

In the recent case of Dahnke-Walker Milling Company *v.* C. T. Bondurant, decided December 12, 1921, No. 30, October term, 1921, it was therein held:

> "Some cases may fall on both sides of the line, but with this we are not now concerned. Among those in which the review may be on writ of error the section includes—any suit * * * where is drawn in

question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity.'

"Among those in which the review may be on writ of certiorari are

'any suit * * * where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is against their validity;' and

'any clause where any title, right, privilege, or immunity is claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under the United States, and the decision is either in favor of or against the title, right, privilege or immunity especially set up or claimed, by either party, under such Constitution, treaty, statute, commission or authority.'

"In the State court the plaintiff did not simply claim a right or immunity under the Constitution of the United States, but distinctly insisted that as to the transaction in question the Kentucky statute was void, and therefore unenforceable, because in conflict with the commerce clause of the Constitution. The court did not accede to the insistence, but applied and enforced the stat-

ute. Of course, that was an affirmation of its validity when so applied. Bridge Proprietors *v.* Hoboken Co., 1 Wall., 116, 144; McCullough *v.* Virginia, 172 U. S., 102, 116-117; General Oil Co. *v.* Crain, 209 U. S., 211, 228; Corn Products Refining Co. *v.* Eddy, 249 U. S., 427, 432. And see Western Union Telegraph Co. *v.* Kansas, 216 U. S., 1, 3, 27. The case is therefore of the class described in the first of the provisions which we have quoted from the jurisdictional section."

* * * * * * *

"Besides, a litigant can be heard to question a statute's validity only when and so far as it is being or is about to be applied to his disadvantage. Yazoo & Mississippi R. R. Co. *v.* Jackson Vinegar Co., 226 U. S., 217; Jeffrey Manufacturing Co. *v.* Blagg, 235 U. S., 571, 576. Neither does it matter on what ground the court upheld and enforced the statute. The provisions quoted from the jurisdictional section show that in cases where the validity of a State statute is drawn in question because of alleged repugnance to the Constitution the mode of review depends on the way in which the State court resolves the question. If it be resolved in favor of the validity of the statute the review may be on writ of error; and if it be resolved against the validity the review can only be on writ of certiorari. The provisions take no account of the particular grounds or reasons on which the decision is put."

* * * * * * *

"Our conclusion on the jurisdictional question is that, as the State court applied and enforced to the plaintiff's disadvantage a State statute which the plaintiff seasonably insisted as so applied and enforced was repugnant to the Constitution and void, the case is rightly here on writ of error. Like rulings on like grounds will be found in Eureka Pipe Line Co. *v.* Hallanan, *post*, 127; 42 Sup. Ct. Rep., and United Fuel Gas Co. *v.* Hallanan, *post*, 130; 42 Sup. Ct. Rep."

The case of Hunter *v.* Pittsburgh, in 207 U. S., 161-176, we respectfully submit, is in point with the instant case:

"The defendant in error moved to dismiss the case because no Federal question was raised in the court below or by the assignment of errors, or, if any Federal question was raised, because it was frivolous. This motion must be overruled. The plaintiffs in error claimed that the act of assembling was in violation of the Constitution of the United States, and specially set up and claimed in the court below rights, under several sections of that Constitution, and all their claims were denied by that court. These rights were claimed in the clearest possible words, and the sections of the Constitution relied upon were specifically named. The questions raised by the denial of these claims are not so unsubstantial and devoid of all color of merit that we are warranted in dismissing the case without consideration of their merits."

We respectfully submit that the record in this case shows a full compliance with section 237 of the Judicial Code and the decisions of this court and that the writ of error lies to the Supreme Court of Kansas.

POINT II.

The District Court of Crawford County, Kansas, Was Without Jurisdiction to Issue Its Order Directing Plaintiffs in Error to Forthwith Appear and Testify Before the Court of Industrial Relations, and Due Process of Law was Therefore Denied Plaintiffs in Error.

The District Courts are provided for in the Constitution of Kansas, and section 175 thereof (p. 47, Kansas General Statutes, 1915), reads as follows:

> "Jurisdiction: The District Courts shall have such jurisdiction in their respective districts as may be provided by law."

The District Court's order was not given in the exercise of any power inherent in courts of general jurisdiction, because courts have no inherent power to order parties to appear before any tribunal, or any place, to give testimony, except before the court itself. No statute of the State of Kansas confers on the District Court of Crawford County the authority to issue such an order. No statute confers power to punish for the violation of such an order. No statute ordains or establishes a pro-

cedure for the granting of such an order and the punishing for failure to obey it.

It is true that Sec. 11 of Ch. 29, Special Session Laws, 1920, seeks to confer on the Court of Industrial Relations the authority and power to apply to a court of "competent jurisdiction" for an order compelling obedience to the Industrial Court's subpoena. But nowhere in said act or in any other statute, does the Kansas legislature enlarge the jurisdiction of the District Court of Crawford County, to grant the order.

The legislature has provided no machinery for actually compelling obedience to the subpoena of the Court of Industrial Relations. It is not for this court or any other court to supply that omission.

The contempt charge therefore was based on the violation of a void order.

There can be no contempt of a void order.

The Supreme Court of Pennsylvania, in *Commonwealth ex rel. Sheeler v. Sheeler*, 95 At., 468, held as void a contempt order of a court of general jurisdiction which sought to punish as for a contempt a party whom it had ordered to make payment as directed in a judgment of a predecessor court.

Ex parte Rowland 104 U. S., 604.
Forman *v.* Healey, 93 N. W., 866.
State *v.* McGahey, 97 N. W., 865.
State *v.* Scarborough, 49 S. E., 860.

I. C. C. v. Brimson, 154 U. S., 447, distinguished: The Act of Congress creating the Interstate Commerce Commission, involved in the Brimson case, specifically authorizes and directs the U. S. Circuit Court to order the witness to appear and testify before the I. C. C. and empowers and directs said court to punish "as for a contempt" a refusal to obey the court's order. The judgment of contempt against Brimson would not have been upheld in the absence of the specific grant of jurisdiction to the Circuit Court to issue the order and punish for its violation.

With the Brimson case setting out legislative and judicial guide-posts, this court cannot be asked to supply the jurisdiction which the Kansas Legislature and Governor neglected to give to the District Court of Crawford County.

In *Ellison v. State*, 24 N. E., 739 (May 27, 1890), the Supreme Court of Indiana reversed a contempt judgment of a circuit court because, though the alleged contempt was of an order of the circuit court committed before the bench, the express legislative authority was lacking. (The circuit court sought to compel a witness to testify in an examination by the State's attorney regarding the commission of a crime. A statute had given the Common Pleas Court that power, but denied it to the Circuit Court. A later statute abolished the Common Pleas Court and conferred all its powers and authority on the Circuit Court. But said

statute did not, *in express terms*, confer jurisdiction on the Circuit Court.) (Italics ours.)

We submit, therefore that the District Court of Crawford County, Kansas, was without jurisdiction to issue its order directing plaintiffs in error to forthwith appear before the Court of Industrial Relations and that said order violated the right of plaintiffs in error to due process of law as guaranteed to them by the 14th Amendment to the Constitution of the United States.

POINT III.

The Plaintiffs in Error Cannot Be Punished for the Violation of an Order Granted Against Them Without Notice or Hearing.

The record shows that the Court of Industrial Relations, by the Attorney General of Kansas, applied on April 6, 1920, to the District Court of Crawford County, Kansas, for an order compelling the plaintiffs in error to forthwith appear and testify before the Court of Industrial Relations, and that the order was granted, instanter, in an *ex parte* manner, without any notice or hearing being accorded to plaintiffs in error. Said application (Tr., 1, 2, 3), in substances alleges that the Court of Industrial Relations is about to hear and determine a controversy concerning wages and working conditions in the coal mines in Crawford County, Kansas, that plaintiffs in error are offi-

cials of the Mine Workers Union, that members of said union initiated the complaints before the Industrial Court, that plaintiffs in error were subpenaed by said Industrial Court and disobeyed said subpoena, that plaintiffs in error conspired to disobey said subpoenas in contempt of the Court of Industrial Relations and of the authority of said Court of Industrial Relations to compel their obedience to said subpoenas; and that plaintiffs in error had information about increases in wages, if any, about to be put into effect by the employers of said miners with the approval and adoption of said labor union of miners, and that, by not appearing and testifying they were hindering and unlawfully delaying said Court of Industrial Relations in conducting to a full determination and settlement the controversies referred to.

We respectfully submit that any application such as the above should, by its averments, have challenged the attention of the District Court as to the legality and validity of granting the order applied for. The questions of powers, jurisdictions, contempts, conspiracy, privilege, etc., suggested in the application "leap to the eye."

But the District Court granted the order, instanter, without any notice or hearing, and permitted no opportunity to defend against the application or the allowing of the order. The essential elements of due process of law are notice and opportunity to defend. This court well said in *Morey v. Elliott*, 167 U. S. 409-414:

> "The fundamental conception of a court of justice is condemnation only after hearing. To say that courts have inherent power to deny all right to defend an action and to render decrees without any hearing whatever, is, in the very nature of things, to convert the court exercising such an authority into an instrument of wrong and oppression, and hence, to strip it of that attribute of justice upon which the exercise of judicial power necessarily depends."

Again, in Hovey v. Elliott, this court, by Chief Justice White, referred approvingly to the ancient rule of Seneca, which has ever been the basic law of England and of the United States, to the effect that:

> "Qui statuit aliquid, parte
> inaudita altera,
> Aequum licet statuerit,
> haud aequs fuit."

As expressed by Chief Justice White in the above case, the denial of notice or hearing, or the proceeding without giving notice or hearing, which amounts to the same thing, is a flagrant violation of the rights of the citizen, and would, if valid, tend to convert the judicial department of the Government into an engine of oppression and would make it destroy great constitutional safeguards.

A perusal of the many cases and rules referred to and adopted by Chief Justice White, leads inevitably to the conclusion that the order of the Dis-

trict Court of Crawford County, Kansas, directing the plaintiffs in error to appear before the Court of Industrial Relations, and there testify, was a void order, for lack of notice and hearing, and therefore a denial of due process as guaranteed under the 14th amendment, and consequently there could be no valid judgment of contempt against the plaintiffs in error for their failure to obey that order.

In A. T. & S. F. Railway Co. v. Brown, 80 Kans., 312; 102 Pac., 459, it was held that the State could not compel the sacrifice of even a few moments time (time to write out a reason for the discharge of an employee), any more than it could compel the sacrifice of days.

> "'Due process of law' implies that whenever, in a judicial proceeding, a judgment is rendered by a court of justice affecting the liberty or condemning the property of another person, he is entitled to have reasonable notice of such procedure, trial, or contest."
>
> Mead *v.* Larkin, 66 Ala., 87, 88.
> Jones *v.* Yore, 13 S. W., 384, 385, 142 Mo., 38.
> Scudder *v.* Jones, 32 N. E. 221, 223, 134 Ind., 547.

> "The essential elements of 'due process of law' are notice and opportunity to defend."
>
> Simon *v.* Craft, 182 U. S., 427.
> *Ex parte* Strieker (U. S.), 109 Fed., 145, 150.

"'Due process of law' requires notice and hearing before judgment."

Irwin *v.* Pierro, 47 N. W., 151.

Davis *v.* St. Louis County Comrs, 67 N. W., 997.

"'Due process of law' requires an orderly proceeding adapted to the nature of the case, in which the citizen has an opportunity to be heard, and to defend, enforce, or protect his rights. A hearing or an opportunity to be heard is absolutely essential, and a necessity of notice of the time and place of such hearing is conclusively implied."

Stuart *v.* Palmer, 74 N. Y., 183, 189.

In re Union Elevated R. Co. of Brooklyn, 19 N. E., 664, 668.

"'Due process of law' means notice. Notice precedes trial, trial leads to judgment, and judgment is the sentence of the court."

City of Philadelphia *v.* Pepper, 8 Atl., 241, 243.

"'Due process of law' means that the person entitled to due process of law shall receive a reasonable opportunity to have his grievance redressed."

Stillwater & M. St. Ry. Co. *v.* Slade, 55 N. Y. Supp., 966, 968.

"'Due process of law' signifies a right to be heard in one's defense, so that, where a contempt committed out of court is punished without giving the offender a hearing, such

punishment deprives him of his liberty without due process of law."

McClatchy *v.* Superior Court of Sacramento County, 51 Pac., 696, 699; 39 L. R. A., 691.

"'Due process of law' necessarily implies and includes the right to answer and to contest a charge."

Babcock *v.* City of Buffalo (N. Y.), Sheld. 317, 340.

POINT IV.

The Provisions of the Court of Industrial Relations Act Affecting the Business of Coal Mining with a Public Interest Violates Liberty of Contract and Due Process of Law.

The plaintiffs in error also contend that that part of the Court of Industrial Relations Act which attempts to affect with a public interest the business of coal mining is invalid. We herein direct the court's attention to the authority under which the legislature seeks to affect with a public interest the mining of coal, and conferring upon the Court of Industrial Relations the power to enforce the provisions of that part of the Industrial Relations Act requiring plaintiffs in error to testify in a controversy and hearing relating to the business of coal mining as affected with a public interest.

The legislature by said enactment seeks to de-

rive its authority from the police power of the State in that it sets forth in said enactment that said power is to protect the public health, and morals, and promote the general welfare, and suggests interentially that the authority therein derived to regulate certain industries, enterprises, etc., affected with a public use and public interest, is part and parcel of the police power.

Like all grants of power in this republican form of government under which we live, there is a limitation upon the same, and so it is with the police power of the State. The power to regulate business affected with a public use as distinguished from a public interest only, is a valid exercise of the police power, but the authority to affect with a public interest the business of coal mining cannot be exercised under such power, as hereinafter shown.

In attempting to affect the business of coal mining with a public interest, plaintiffs in error are deprived of liberty of contract and due process of law under the 14th amendment as it is sought to compel them to testify in a controversy and hearing based upon that provision of the statute which states that coal mining is affected with a public interest.

The Supreme Court of Missouri, in *The State v. Loomis*, 22 S. W., 350; 115 Mo., 307, has said in part, as follows:

> "Liberty, we have seen, includes the right to acquire property and that means and in-

cludes the right to make and enforce contracts. We do not say that such rights cannot be regulated by general law, but we do say that the legislature cannot single out one class of persons who are competent to contract and deprive them of rights in that respect which are accorded to other persons. The Constitutional declaration, that no person shall be deprived of life, liberty or property without due process of law, was designed to protect and preserve their existing rights against arbitrary legislation as well as against arbitrary executive and judicial acts. The sections of our statute in question deprive a class of persons of the right to make and enforce ordinary contracts, and they introduce a system of state paternalism which is at war with the fundamental principles of our government, and, as we have before said, are not due process of law.

"It cannot be said that these defendants, in operating their coal mines, are pursuing a public business, or that they have in any way, shape or form devoted their property to a public use, and this being so the cases of Munn *v.* Illinois, 94 U. S., 113-114, and Budd *v.* New York, 143 U. S., 517, are not in conflict with what we have said. On the contrary, the line of argument pursued in those cases goes far to show that a statute like the one in hand cannot stand. The many adjudications upholding police regulations need not be noticed, for it cannot be claimed that the law in question is of that character."

And in the great coal producing State of Illinois, its Supreme Court in *Millett v. Illinois*, 117 Ill., 294, in passing upon the very same question and having before it the well-known case of *Munn v. Illinois*, 94 U. S., 113, said in clear and unmistakable language, in part, as follows:

> "The main reliance of the counsel representing the State, to sustain the ruling below, seems, however, to be on the ground that mining of coal is affected with a public use, so that it may be regulated by law, like public warehouses, as held in Munn *v.* Illinois, 94 U. S.; C., 4 Otto, 113. It cannot be claimed that mining for coal was, by the common law, affected with a public use, and therefore specially regulated by law, like the business of inn-keepers, common carriers, millers, etc., and, in our opinion, it is not, like the business of public warehousing, within the principle controlling such classes of business. The public are not compelled to resort to mine owners any more than they are compelled to resort to the owners of wood, or turf, or even the owners of grain, domestic animals, or to those owning any of the other ordinary necessaries or conveniences of life which form a part of the commerce of the country. The owner of a coal mine is under no obligation to obtain a license from any public authority, and therefore when he chooses to mine his coal he exercises no franchise. We are aware of no case wherein it has been held that the

owner or operator of a coal mine stands on a different footing, as respects the control and sale of his property, than the owner or operator of any other kind of property in general demand by the public."

The Supreme Court of West Virginia has also said that:

"'Such legislation' as is well said by the court, *In re* Jacobs, 98 N. Y., 114, 'may invade one class of rights today and another tomorrow, and, if it can be sanctioned under the construction, while far removed in time, we will not be away in practical statesmanship from those ages when governmental prefects supervised the building of houses, the rearing of cattle, the sewing of seed, and the reaping of grain, and governmental ordinances, regulated the movements and labor of artisans, the rate of wages, the price of food, and diet and clothing of the people, and a long range of other affairs long since, in all civilized lands, regarded as outside of governmental functions. Such governmental interferences disturb the normal adjustments of the social fabric, and usually derange the delicate and complicated machinery of industry, and cause a score of ills while attempting the removal of one.' * * * But, as said by Chancellor Kent (1 Kent Comm., 450), 'it is only by the free exercise of this power that courts of justice are enabled to repel assaults and protect every part of the government, and every member of the community, from un-

> due and destructive innovations upon their charter rights' " (State *v.* Goodwill, 33 W. Va., 179).

The great State of Pennsylvania is, as the court well knows, another large coal-producing commonwealth, and its highest court has laid down the proposition in an interpretation of an act similar in part to the Court of Industrial Relations law that:

> "The act is an infringement alike of the right of the employer and the employee; more than this, it is an insulting attempt to put the laborer under a legislative tutelage, which is not only degrading to his manhood, but subversive of his rights as a citizen of the United States.
>
> "He may sell his labor for what he thinks best, whether money or goods, just as his employer may sell his iron or coal, and any and every law that proposes to prevent him from so doing is an infringement of his constitutional privileges, and consequently vicious and void" (Godcharles & Co. *v.* Wigeman, 113 Pa., 437).

Judge Cooley in his Constitutional Limitations, 7th Edition, 876, shows that the business of coal mining is not within the classification of the various businesses which are affected with a public interest, and within the principle laid down in the Munn case:

> "(1) Where the business is one the following of which is not of right, but is permitted by the State as a privilege or fran-

chise. Under this head would be comprised the business of setting up lotteries, of giving shows, etc., of keeping billiard tables for hire and of selling intoxicating drinks, when the sale by unlicensed parties is forbidden; also the cases of toll bridges. (2) Where the State, on public grounds, renders to the business special assistance, by taxation or otherwise. (3) Where for the accommodation of the business, some special use is allowed to be made of public property or of a public easement. (4) Where exclusive privileges are granted in consideration of some special return to be made to the public."

It is respectfully submitted that as the business of coal mining as shown heretofore does not come within a public use, therefore, it cannot be impressed with a public interest.

POINT V.

There Can Be no Contempt in This Case Because the Act, Chapter 29, Kansas Special Session Laws of 1920, Seeking to Create the Kansas Court of Industrial Relations Is Void on Its Face as an Arbitrary, Oppressive, Unreasonable and Unjust Discrimination in Violation of the 14th Amendment to the United States Constitution.

The act seeks to regulate carriers, public utilities, and manufacturers in certain lines of indus-

try. It includes the mining of coal. It denies t
the employers in certain lines of service and bus
ness rights which it does not deny to other emplo
ers similarly situated. It denies to the employe
in the specific lines of industry the right to strik
the right to picket, the right to use advertising an
propaganda, and other rights which it does n
deny to the employees of other industries in th
same situation before the law.

Sec. 3 of the act excludes farmers, live-sto
raisers and their employees, excludes wholesale
and retailers of food, fuel, and clothing product
excludes manufacturers in many lines of busines
The policy of these exclusions upon the part
legislators representing agricultural districts, pa
ticularly in a State like Kansas where all the man
facturing in the State is embraced in a very sma
number of legislative districts, can be well unde
stood. But that such discrimination which deni
rights to certain citizens of the State and mak
them amenable to criminal laws, while leavi
others similarly situated free to do the same act,
clearly an arbitrary, oppressive, unreasonable a
unjust discrimination, and therefore a violation
the 14th amendment to the United States Cons
tution.

The fact that the act, Sec. 3, contains wordi
designed to exclude farmers and live-stock rais
from its provisions, without so stating in expr
terms, must challenge the attention of this co
and merit condemnation. For example: Sec. 3
the act states in part:

> "The manufacture or preparation of food products whereby, in any state of the process substances are being converted, either partially or wholly, from their natural state to a condition to be used as food for human beings."

The words "from their natural state to a condition to be used as food for human beings" are designed and can have no other effect than to exclude farmers and live-stock raisers. Shall the fact that the framers of the law cleverly sought to employ language that would escape the condemnation visited upon similar cases make the act in question less a violation of the 14th amendment?

In *Connolly v. Union Sewer Pipe Co.*, 184 U. S., 540, 22 Supreme Court, 431, 46 L. E., 679, this court considered an act of the State of Illinois prohibiting combinations of capital, or skill, to limit or reduce the production, or increase the price of commodities. In that case, the statute said:

> "The provisions of this act shall not apply to agricultural products or live stock, while in the hands of producer or raiser."

In an elaborate opinion, this court held this section to be repugnant to the 14th amendment. This court also held that this section was so interwoven with other sections that its invalidity affected the entire act.

On October 21, 1920, in *United States v. Youmt et al.*, 267 Fed., 861, the District Court, Western

District, Pennsylvania, quoting approvingly the Connelly case, supra, and employed the following language which is applicable to the instant case:

> "All foods and feeds are the product of the soil and come from the land. Their production and initial distribution is a work of the farmer, gardener, horticulturist, vineyardist, planter, ranchman, dairy man, stockman, or other agriculturists, and all these persons are excepted from the provisions of the act. All these may, with impunity, wilfully and for the purpose of enhancing the price, destroy, waste or hoard the necessities which come from the farm. These thousands might form a gigantic combination, through any unfair device or discriminatory means to limit the production or restrict the supply and distribution of these necessaries, that they might make greater gains by extorting excessive profits, and yet such acts while utterly destructive of the purpose of the statute, would receive the sanction of the law; while these very same acts committed by any other person not in the favored class, would make him a criminal, and deprive him of his property or his liberty or both. Surely such classification is unjust and arbitrary in the extreme, violating both the letter and the spirit of the 14th amendment. It was so held in an elaborate and learned opinion by Judge Anderson of the District Court of Indiana in the case of U. S. *v.* Armstrong, 265 Federal, 683."

In the instant case the act is subject to the criti-
an quoted above and to the further criticism that
seeks to affect, regulate and define punishment
r certain acts in the mining of coal in the State
Kansas, whereas those engaged in the owner-
ip, operation or employment in the salt mines,
r example, within the same State are free to do
th impunity the acts regulated or made criminal
r those engaged in mining fuel.

In *McFarland v. American Sugar Refining Co.*,
1 U. S. 79, this court held a statute of the State
Louisiana to be violative of the 14th amend-
nt of the United States Constitution, for that
was an arbitrary classification of the sugar re-
ing industry and submitted that business to dras-
regulations not imposed upon others similarly
ated. Sugar must be conceded to be more es-
tial to the people of Kansas than certain kinds
fuel or certain articles of wearing apparel or
ticular articles of manufactured food. Yet the
leaves the sugar wholesalers and retailers and
ir employees free to do acts that are denounced
made criminal in the industries placed under
act.

n the case of *Connolly v. Union Sewer Pipe Co.*,
U. S., 540-563, this Court further stated:

> "* * * It is quite a different thing for the State, under its general police power, to enter the domain of trade or commerce, and discriminate against some by declaring that particular classes within its jurisdic-

3
5

tion shall be exempt from the operation of a general statute making it criminal to do certain things connected with domestic trade or commerce. Such a statute is not a legitimate exertion of the power of classification, rests upon no reasonable basis, is purely arbitrary, and plainly denies the equal protection of the laws to those against whom it discriminates."

* * *

"Returning to the particular case before us, and repeating or summarizing some thoughts already expressed, it may be observed that if combinations of capital, skill, or acts, in respect of the sale or purchase of goods, merchandise, or commodities, whereby such combinations may, for their benefit, exclusively, control or establish prices, are hurtful to the public interests and should be suppressed, it is impossible to perceive why like combinations in respect of agricultural products and live stock are not also hurtful. Two or more engaged in selling dry goods, or groceries, or meats, or fuel, or clothing, or medicines are, under the statute, criminals, and subject to a fine, if they combine their capital, skill, or acts for the purpose of establishing, controlling, increasing, or reducing prices, or of preventing free and unrestrained competition amongst themselves or others in the sale of their goods or merchandise; but their neighbors, who happen to be agriculturalists and live stock raisers, may make combina-

tions of that character in reference to their grain or live stock without incurring the prescribed penalty. Under what rule of permissible classification can such legislation be sustained as consistent with the equal protection of the laws? It cannot be said that the exemption made by the 9th section of the statute was of slight consequence, as affecting the general public interested in domestic trade and entitled to be protected against combinations formed to control prices for their own benefit; for it cannot be disputed that agricultural products and live stock in Illinois constitute a very large part of the wealth and property of that state."

This court has said in *Yick Wo v. Hopkins*, 118 U. S., 356, that the ordinances therein interpreted are directed against a particular class of persons and a denial of due process of law. We contend that in the instant case section 3 of the Court of Industrial Relations Act, which selects the particular classes to which the law is to be applied, contains the same fatal defect.

The case of *Brown v. Jacobs Pharmacy Co.*, 41 S. E., 553; 115 Ga., 429, declares void, as against due process, a statute known as "Anti-trust Act" which exempts farm products and live stock while in possession of the producer or raiser.

State v. Cudahy, 82 Pac., 833; 33 Mont., 179, holds the same as above, and considers whether all or only a part of the act should fall.

State v. Waters-Pierce Oil Co., 67 S. W., 1057.

Adams v. Tanner, 244 U. S., 590.

Allgeyer v. Louisiana, 165 U. S., 578.

Coppage v. Kansas, 236 U. S., 1.

Adair v. United States, 208 U. S., 161.

Truax v. Raich, 239 U. S., 33.

Hitchman Coal & Coke Co. v. Mitchell, 245 U. S., 229.

Colyer v. Skeffington, 265 Fed., 62.

POINT VI.

The Act Seeking to Create the Court of Industrial Relations Is Void, as Against the 14th Amendment, Because It is a Penal Statute That is Too Vague, Indefinite and Uncertain, and an Unlawful Restraint on Interstate Commerce.

Sections 18 and 19 prescribe the penalties for violations of the provisions of the Act. They read as follows:

> "SEC. 18. Any person willfully violating the provisions of this act, or any valid order of said Court of Industrial Relations, shall be deemed guilty of a misdeamor, and upon conviction thereof in any court of competent jurisdiction of this state shall be punished by a fine of not to exceed $1,000, or by im-

prisonment in the county jail for a period not to exceed one year, or by both such fine and imprisonment.

"SEC. 19. Any officer of any corporation engaged in any of the industries, employments, utilities or common carriers herein named and specified, or any officer of any labor union or association of persons engaged as workers in any such industry, employment, utility or common carrier, or any employer of labor, coming within the provisions of this act, who shall willfully use the power, authority or influence incident to his official position, or to his position as an employer of others, and by such means shall intentionally influence, impel, or compel any other person to violate any of the provisions of this act, or any valid order of said Court of Industrial Relations, shall be deemed guilty of a felony and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine not to exceed $5,000, or by imprisonment in the state penitentiary at hard labor for a term not to exceed two years, or by both such fine and imprisonment."

The words "violate the provisions of this act or any valid order of said Court of Industrial Relations," in Sec. 18, and the same words, coupled with others, used in the conjunctive, of still broader purport, must be considered in connection with the various other sections and provisions. When so considered, it is manifest that the Act subjects

citizens to imprisonments and fines for acts and under circumstances which are not defined or specifically denounced. A penal Act must make it clear and certain just what acts or omissions, if committed, will subject a citizen to punishment. The following references illustrate the vagueness, and indefiniteness of the act.

Sec. 6 subjects the employers and employees to the penalties for doing anything which tends to "hinder, delay, limit or suspend such continuous and efficient operation" if the prosecuting officials think the acts or omissions were done with that intent.

Under Sec. 7, the Court of Industrial Relations is authorized and directed to "make and serve upon all interested parties its findings, stating specifically the terms and conditions upon which said industry, employment, utility or common carrier should be thereafter conducted in so far as the matters determined by said court are concerned." The stresses and exigencies of competition, the lack of capital, or a thousand other moving causes, may conflict with, or obviate, full compliance with any such "finding" or "terms and conditions," but the employers and employees are compellable to hazard their liberty before a court and jury for failure to comply.

Sec. 8 and Sec. 9 refer to "such terms, conditions, rules, practices, wages, or standard of wages," and are subject to the same criticism, above, as Sec. 7.

Sec. 13, considered with the penalty sections, might make the bringing of an action at law or in equity, after thirty days from the time of service of the Industrial Court's order, a misdemeanor.

Secs. 15, 16 and 17, in particular, would, if valid, subject the employers and employees to criminal prosecution under terms so vague and indefinite that no man could know with certainty, when about to perform the acts, whether or not he was about to commit a crime. Every lay-off by employers and every cessation of work by employees, act to "delay, limit, or suspend the production," and every man is presumed to intend the consequences of his acts. Surely, the legislature did not intend there should be no change or adjustment whatever in any of the affected industries except upon permission of the Court of Industrial Relations being first had and obtained. Industry could not be so conducted. Then, who shall say, and who shall know, what acts and omissions are, or are not, made criminal?

The mere expression of any approval or disapproval concerning any employer, or his or its products, mere advertising or solicitation of almost any scope, criticisms of any kind, or mere trade associations, when related to employers or employees before the Court of Industrial Relations, may mean the county jail or State penitentiary. Where, in such matters, do the penal sections start to operate? Where is the line beyond which to transgress is a crime?

A perusal of Sec. 3 shows that, in its effort to exclude farmers, live-stock raisers and wool-growers from the terrors of the act, the legislature adopted such indefinite and vague terminology that, as to many lines of manufacture of food products or "all manner of wearing apparel in common use," the act is so vague and indefinite that inclusion or exclusion cannot be known with certainty. Lest it be contended that a review is permitted under the act, we ask, must the employers and employees risk their time, money and property through omitting to act, pending such review? The very omission to act, as the exigencies of the conduct of industry require, when the decision of the review cannot be known, may mean criminal prosecution.

In *Oklahoma Operating Co. v. Love*, 252 U. S. 331, speaking through Mr. Justice Brandeis, this court said:

> "Obviously a judicial review beset by such deterrents does not satisfy the constitutional requirements, even if otherwise adequate, and therefore the provisions of the act relating to the enforcement of the rate by penalties are unconstitutional without regard to the question of the insufficiency of those rates."
>
> *Ex parte* Young, 209 U. S., 123, 147.
> Mo. Pac. Ry. *v.* Tucker, 230 U. S. 340, 349.
> Wadley Southern Rwy. *v.* Georgia, 235 U. S., 651, 652.

Considering a subpoena of the Court of Industrial Relations as one of its "lawful orders," does the refusal to obey the subpoena mean that the offender is to be prosecuted criminally, under Sec. 18? Surely the act could be construed so as to make the punishment assessed against the plaintiffs in error in the instant case a conviction and punishment by way of contempt, for the commission of a crime. Moreover, the interstate business in the mining of coal, as well as in meat-packing and the other affected industries, would by this act of the Kansas legislature be subjected to the unnecessary, unreasonable and unjust burdens and restraints of transacting business only as permitted by the Industrial Court, whenever the court saw fit to interfere. There is nothing in the act to authorize the Industrial Court to order higher selling prices of coal, or meat, or wearing apparel, to compensate for any increased wages or operating expenses; and advanced selling prices, against interstate competition, would be a delusion. The treasury or taxing power of Kansas are not back of the employer or employees who suffer losses from the Industrial Court's rulings. But the penal sections, in their generalities and vagueness, confront the employers and employees who fail to comply with "any valid order" of the Industrial Court.

So considered, the act, as sought to be applied to the plaintiffs in error, should be held as void *ab initio*.

The Application (Tr., 2) Is Insufficient and Illegal.

The application (Tr., 2) for the order directing the plaintiffs in error to forthwith appear and testify shows on its face that it is an effort to have punishment visited upon the plaintiffs in error for a contempt of the Court of Industrial Relations. The District Court of Crawford County, Kansas, is a court of general jurisdiction and it exists and will continue to exist irrespective of the jurisdiction or operation of the Court of Industrial Relations Law. There is nothing in the Court of Industrial Relations Law that compels the exercise of any jurisdiction upon the part of the District Court of Crawford County, Kansas, and nothing requested under the application herein or done pursuant thereto was necessary to perpetuate or effectuate the jurisdiction, processes or orders of the District Court of Crawford County, Kansas.

The application (Tr., 2) contains the following words:

> "That each and all of said witnesses, to wit: Alexander Howat, August Dorchy, Thomas Harvey, Robert B. Foster and Thomas Cunningham, have personal knowledge of said proceedings and of the issuance and service of said subpoenas, and are purposely and willfully disobeying the same, that said persons, while the said court was in session at the said time the subpoenas commanded them to appear in court and give testimony, met together in the City of

Pittsburgh, and by conspiracy and agreement with each other, agreed to disobey said subpoena in contempt of the authority of said court to compel their obedience to said subpoenas."

* * * * * *

"* * * and that said persons, subpenaed as aforesaid, as witnesses, are willfully and purposely withholding the said information from the said court for the purpose of hindering and unlawfully delaying said court in performing its duties under the laws of the State of Kansas, and conducting to a full determination and settlement any controversy which may exist between the employees of said mining district and their employers, or from issuing any orders or commands to change or improve the living conditions, working conditions, or the relations of the employers to employees within said district and State."

The above sections of the application, considered in connection with the sections of the Court of Industrial Relations Act making certain acts unlawful, and especially those sections which state "by any other means" and "violate any lawful order of said Court of Industrial Relations," and considered further in connection with Sections 18 and 19, or misdemeanor and felony sections, force the conclusion that the application (Tr., 2) should have been denied by the District Court of Crawford County, Kansas, for the reasons indicated

above, and, if said District Court considered, as it actually did, the Court of Industrial Relations Act valid, the Attorney General and the Industrial Court should have been remitted by the District Court to the criminal jurisdiction and procedure.

We submit, therefore, and adhere to, our belief that the Industrial Court Act is void, *ab initio*, and respectfully suggest that, even though the District Court proceeded on the assumption that it was valid, nevertheless, the application on which the District Court's order was based was insufficient and invalid, and could not support the order as granted.

POINT VII.

The Industrial Court Act Violates Section 4 of Article 4 of the United States Constitution in That It Commingles the Functions of the Three Great Departments of the Government and Is Therefore a Denial of a Republican Form of Government, and of Due Process.

Sec. 12 of the act authorizes proceedings in the State Supreme Court, first to enforce compliance with the orders of the Industrial Court, thereby giving enlarged jurisdiction to the Supreme Court, and second, to compel the Court of Industrial Relations under certain circumstances, to "enter just, reasonable, and lawful orders;" thus conferring legislative power upon the Supreme Court. Sec. 12 states in part as follows:

"* * * and in case either party to said controversy should feel aggrieved at any order made and entered by said Court of Industrial Relations, such party is hereby authorized and empowered within ten days after service of such order upon it to bring proper proceedings in the Supreme Court of the State of Kansas to compel said Court of Industrial Relations to make and enter a just, reasonable and lawful order in the premises. In case of such proceedings in the Supreme Court by either party, the evidence produced before said Court of Industrial Relations may be considered by said Supreme Court, but said Supreme Court, if it deem further evidence necessary to enable it to render a just and proper judgment, may admit such additional evidence in open court or order it taken and transcribed by a master or commissioner. In case any controversy shall be taken by either party to the Supreme Court of the State of Kansas under the provisions of this act, said proceedings shall take precedence over other civil cases before said court, and a hearing and determination of the same shall be by said court expedited as fully as may be possible consistent with a careful and thorough trial and consideration of said matter."

This section can only mean that the Supreme Court of the State of Kansas is authorized to determine for itself what transportation charge, utility rate, rate of wages, etc., would, in the premises, be just, reasonable and lawful, and to issue

its order to the Court of Industrial Relations, compelling said Court of Industrial Relations to make its order accordingly. The language of the act unmistakably and exclusively seeks to confer the power to determine the rate of charge, and to compel the installation, through the Court of Industrial Relations, of the rate or charge so determined. No one can be heard to say that Section 12 provides for a judicial proceeding. While the Supreme Court might refuse to do otherwise than to declare an order of the Court of Industrial Relations to be reasonable or unreasonable, and might refuse to proceed to determine what would be a just, reasonable and lawful rate, nevertheless, the act in Section 12 seeks to empower and direct the Supreme Court so to do. It is what *may be* done under an act of this kind, not what *has been* done that serves as the measure of its constitutionality, as the fixing of utility rates and transportation charges, for example are clearly functions of the legislative arm of the Government, and Section 12 provides for the commingling of these functions in violation of every definition of the Republican form of government.

Section 9 of the act contains the following:

> "If, during the continuance of any such employment, the terms and conditions of any such contract or agreement hereafter entered into, are by said Court in any action or proceeding properly before it under the provisions of this Act, found to be unfair,

unjust or unreasonable, said Court of Industrial Relations may by proper order so modify the terms and conditions thereof so that they will be and remain fair, just and reasonable, and all such orders shall be enforced as in this Act provided."

The section just quoted is an attempt to confer judicial powers upon the Court of Industrial Relations in that it seeks to empower said court to make the judicial determination as to any contract of wages or employment as to whether said contract is "fair, just and reasonable." Moreover, the act seeks to give the Court of Industrial Relations the power to reform and remake any contract of wages or employment according to what the Court of Industrial Relations may determine to be fair, just and reasonable. This goes beyond any power that any Court of Equity ever sought to exercise.

The last words of Section 9 above quoted, namely, "and all such orders shall be enforced as in this Act provided" considered in conjunction with the following words taken from the close of paragraph 14 "all such collective bargains, contracts or claims shall be subject to the provisions of section 9 of this Act," and section 18 of the act which states:

"Any person wilfully violating the provisions of this act, or any valid order of said Court of Industrial Relations, shall be deemed guilty of a misdemeanor, and upon

> conviction thereof in any Court of competent jurisdiction in this State shall be punished by a fine not to exceed $1,000, or by imprisonment in the county jail for a period not to exceed 1 year, or by both such fine and imprisonment."

clearly show that the legislature sought to confer on the Court of Industrial Relations strictly judicial powers of determination as to the fairness, justice or reasonableness of a wage agreement, or power to reform or remake said agreement, and the authority of obtaining conviction and punishment for failure to obey its finding.

This court held in the *Minnesota Rate Cases*, 134 U. S.:

> "That the reasonableness of a rate is a judicial question."

and we submit that holding is applicable here.

It must be remembered that the State of Kansas was not in existence when the Federal Constitution was adopted. It has a constitution adopted pursuant to congressional legislation admitting the State to Union. There was no constitutional amendment adopted to permit the enactment under the review, but same was passed by a legislature created and limited by a constitution requiring strict separation, clearly defined, of the three great departments. The Kansas legislature, therefore, was bound to impose no law on the plaintiffs in error which commingled the functions of

the three departments, and in so doing it denied the republican form of government guaranteed under the Federal Constitution and under the State Constitution, and, by so doing, inflicted a denial of due process guaranteed by the 14th amendment.

In re Duncan, 139 U. S., 449.
Dodge *v.* Woolsey, 18 How., 331.
Texas *v.* White, 7 Wall., 700.
In re Sims, 54 Kans., 1.
State *v.* Johnson, 61 Kans., 803.
State *v.* Pope, 110 Mo. App., 529.
White Co. *v.* Quin, 136 Ind., 563.
Vigo Co. Comm'rs *v.* Stout, 136 Ind., 53.

POINT VIII.

The Kansas Court of Industrial Relations Law Is a Void Attempt to Legislate on Matters of Exclusive Federal Jurisdiction. It Is Elementary That Where the Federal Government Has Exercised Control in Cases Within Its Jurisdiction That the State, Although at Liberty to Legislate Prior to the Assumption of Control by the Federal Government, is Thereafter Precluded. The Act in Question Contravenes the Clayton Act (38 Statutes at Large, 738) and the Lever Act (Act of August 10, 1917), as shown by the Following:

The Kansas Court of Industrial Relations Law was not enacted until January 24, 1920. The Clay-

tion Act and the Lever Act were in force and effect at that time. The paralleled comparison below shows the act of the Kansas Legislature invades the field occupied fully by the Federal legislation.

Section 20 of the Clayton Act provides:

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be for the purpose of peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising or persuading others by peaceful and lawful means so to do; or from paying or giving to or withholding from any person engaged in such dispute any strike benefits or other moneys or things of value; or from peaceable assembling in a lawful manner and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto, nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States." (38 Stat. L., 738.)

Section 17 of the Court of Industrial Relation Act provides:

"* * * but it shall be unlawful for any such individual employee or other persons to conspire with other persons to quit their employment or to induce other persons to quit their employment for the purpose of hindering, delaying, interfering with, or suspending the operation of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act, or for any person to engage in what is known as 'picketing,' or to intimidate by threats, abuse, or in any other manner any person or persons with intent to induce such person or persons to quit such employment, or for the purpose of deterring or preventing any other person or persons from accepting employment or from becoming in the employ of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act."

It will be noted that Section 3 of the Court of Industrial Relations Act specifies the industries to be included therein, and embraces the mining of coal, manufacture of food, etc., as completely as the same industries are included within those specified under Section 1 of the Lever Act.

Section 1 of the Lever Act provides:

"That it is hereby made unlawful for any person willfully to destroy any necessaries for the purpose of enhancing the price or restricting the supply thereof; knowingly to commit waste or willfully to permit preventable deterioration of any necessaries in or in connection with their production, manufacture, or distribution; to hoard, as defined in section six of this act, any necessaries; to monopolize or attempt to monopolize, either locally or generally, any necessaries; to engage in any discriminatory and unfair, or any deceptive or wasteful practice or device, or to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries; to conspire, combine, agree, or arrange with any other person (*a*) to limit the facilities for transporting, producing, harvesting, manufacturing, supplying, storing, or dealing in any necessaries; (*b*) to restrict the supply of any necessaries; (*c*) to restrict distribution of any necessaries; (*d*) to prevent, limit, or

Section 16 of the Court of Industrial Relations Act says in part:

"It shall be unlawful for any person, firm or corporation engaged in the operation of any such industry, employment, or common carrier willfully to limit, or cease operations for the purpose of limiting production or transportation, or to affect prices, for the purpose of avoiding any of the provisions of this act; * * *"

lessen the manufacture or production of any necessaries in order to enhance the price thereof; (c) to exact excessive prices for any necessaries; or to aid or abet the doing of any act made unlawful by this section."

Section 9 of the Lever Act provides:

"That any person who conspires, combines, agrees or arranges with any other person (a) to limit the facilities for transporting, producing, manufacturing, supplying, storing, or dealing in any necessaries; (b) to restrict the supply of any necessaries; (c) to restrict the distribution of any necessaries; (d) to prevent, limit, or lessen the manufacture or production of any necessaries in order to enhance the price thereof shall, under conviction thereof be fined not exceeding $10,000 or be imprisoned for not more than two years, or both."

We respectfully submit that the legislature of the State of Kansas was without authority to enact the Kansas Court of Industrial Relations Law, or any other act designed to effect such regulation and control over the business of coal mining and other industries, or to define and denounce as crimes and inflict punishments for hindering, delaying or interfering with the production of fuel, food, etc., for the reason that the Federal enactments, then in force and effect, had control and had

ompletely, within the jurisdiction of the Federal overnment, occupied the same field of legislation.

POINT IX.

The Kansas Court of Industrial Relations Act is Void as an Abridgment of the Privileges and Immunities of the Citizens of the United States as Guaranteed Under the Federal Constitution.

The act under review makes it a disdemeanor to "picket," "strike," or "to injure in any manner ny other person" in its business, labor or peace by boycott, by discrimination, by advertising, by ropaganda, or by other means." The act subjects itizens to punishment under Sec. 18 for a misdeeanor or under Sec. 19 for a felony, for acts, ublications or utterances which may be freely ade under the privilege of freedom of speech unr the 14th amendment to the Federal Constitution. Kansas, like other States and like the Nation within its sphere, has appropriate remedies gainst the abuse of freedom of speech. The Kanas constitution and statutes on this subject were ot amended or repealed in the enactment of the ourt of Industrial Relations Law.

Section 15 of the Kansas Court Industrial Relations Act is as llows:

"It shall be unlawful for any rson, firm or corporation to disarge any employee or to dis-

Section 17, in part, is as follows:

"* * * but it shall be unlawful for any such individual employee or other person to conspire with other persons to quit

criminate in any way against any employee because of the fact that any such employee may testify as a witness before the Court of Industrial Relations, or shall sign any complaint or shall be in any way instrumental in bringing to the attention of the Court of Industrial Relations any matter of controversy between employers and employees as provided herein. It shall also be unlawful for any two or more persons, by conspiring or confederating together, to injure in any manner any other person or persons, or any corporation, in his, their, or its business, labor, enterprise, or peace and security, by boycott, by discrimination, by picketing, by advertising, by propaganda, or other means, because of any action taken by any such person or persons, or any corporation, under any order of said court, or because of any action or proceeding instituted in said court, or because any such person or persons or corporation shall have invoked the jurisdiction of said court in any matter provided for herein."

their employment or to induce other persons to quit their employment for the purpose of hindering, delaying, interfering with, or suspending the operation of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act, or for any person to engage in what is known as 'picketing,' or to intimidate by threats, abuse, or in any other manner, any person or persons with intent to induce such person or persons to quit such employment, or for the purpose of deterring or preventing any other person or persons from accepting employment or from remaining in the employ of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act."

The Clayton Act permits everything prohibited and made criminal in the above sections. The laws of every other State permit strikes, peaceful picketing, discrimination, advertising, propaganda, and "other means" in the event of industrial disputes over wages, subject of course, to the general laws governing violence, unlawful assemblage, slander and libel. A statute that is intended as a

repression of speech and action, in such matters, belongs to "Darkest Russia." The privileges and immunities guaranteed to the citizens under the 14th amendment are abridged by the act of the Kansas legislature when it seeks to make it a crime upon the part of the workers to raise their voices in any protest against industrial oppression or in advocacy of betterments in wages and conditions, except upon the benign permission of the Industrial Court being first had and received.

American Steel Foundries *v.* Tri-City Central Trades Council No. 2, U. S. Supreme Court, October Term, 1921. Decided December 5, 1921.

Coppage *v.* Kansas, 236 U. S., 1.

Adair *v.* United States, 208 U. S., 161.

Adams *v.* Tanner, 244 U. S., 590.

Hitchman Coal & Coke Co. *v.* Mitchell, 245 U. S., 229, 251.

Allgeyer *v.* Louisiana, 165 U. S., 578.

Truax *v.* Raich, 239 U. S., 33.

Butchers Union S. H. & L. S. L. Co. *v.* Crescent City L. S. L & S. H. Co., 111 U. S., 746.

Powell *v.* Pennsylvania, 127 U. S., 678.

Colyer *v.* Skeffington, 265 Fed., 62.

Gillespie *v.* People, 188 Ill., 176.

People *v.* Marcus, 185 N. Y., 257.

State *ex rel.* Zillmer *v.* Kreutzberg, 114 Wis., 530.

State *v.* Julow, 129 Mo., 163.

POINT X.

The Kansas Court of Industrial Relations Act Is Void, in That It Empowers said Court to Fix Wages, Hours and Working Conditions, Take Over and Operate Industries, and, Generally, to Install a System of State Socialism, all in Violation of Due Process.

The Kansas Act prohibits strikes and lockouts, with the incidents of picketing, advertising, discriminations, etc., under pain of conviction for a misdemeanor or felony. It compels the plants to operate and the employees to work. It gives the court the power to set aside any collective wage and working agreement and set up its own rulings in lieu thereof. It authorizes said court to take over, control, and manage industries, such as coal mines.

If the law were valid, the agriculturists, being in an overwhelming majority, could oppress and destroy the coal-mining and other industries. If radical farmer or labor elements were in control they could, through exorbitant wages, confiscate the affected industries. If the owners of the industrial plants controlled the Court of Industrial Relations, they could, by long hours and low wages and penalties against strikes, institute and perpetuate what, in effect, would be involuntary servitude. Those acquainted with labor conditions in industry well know that this act could

made an engine of oppression against the workers that would result in the most vicious form of industrial slavery. It is no answer to say that an individual is permitted to quit his job and leave the community. He would, in most cases, have no means of livelihood, and certainly none for removing with his family to another section. Besides, he is entitled to his freedom, as it existed before this act was passed, to act in concert with his fellows for the betterment of his condition in the community where he resides. And his employer is likewise entitled to operate and manage his business free from the fears and restraints and burdens which the act imposes.

Considering "what may be done" under the act as the criterion, there is no conclusion but that the Kansas Court of Industrial Relations Law imposes a form of State socialism that is violative of the due process guaranteed to the plaintiffs in error by the 14th amendment.

POINT XI.

The Kansas Court of Industrial Relations Act Is Void as a Denial of Liberty of Contract as Guaranteed Under the 14th Amendment.

Sec. 3 of the act selects specially classified industries, and the employees therein, and places them under the provisions of the act.

Sec. 4 gives the Court of Industrial Relations

"full power, authority and jurisdiction to supervise, direct and control the operation" of said industries, etc.

Sec. 8 and Sec. 9 give the Court of Industrial Relations the power to fix wages in said industries, their rates being binding without review by the Industrial Court for at least sixty days. An aggrieved party may within ten days "bring proper proceedings in the Supreme Court of the State of Kansas to compel said Court of Industrial Relations to make and enter a just, reasonable and lawful order in the premises." Sec. 9 also applies to wage contracts "hereafter entered into."

Sec. 15 makes it unlawful for an employer to discharge, or to discriminate in any way against, any employee for bringing, directly or indirectly, or aid in bringing any matter of controversy between employers and employees to the attention of the Industrial Court. This section also makes it unlawful for any two or more persons to concertedly, by boycott, discrimination, by picketing, by advertising, by propaganda, or "by other means," injure "in any manner" any other person or corporation in its business, labor, enterprise, peace or security.

Sec. 17 makes it unlawful to omit to do anything required by or under the act or to do anything forbidden by or under the act, and makes strikes, picketing, and other acts unlawful.

Sec. 18 provides the punishment by fine not to exceed $1,000, or by imprisonment not to exceed one year, or both, for conviction for "willfully

violating the provisions of this act, or any valid order of said Court of Industrial Relations."

Sec. 19 makes it a felony for officers of labor unions to call strikes. This section subjects employers of labor and officers of labor organizations, in the industries under this act, subject to punishment as felons for violating any of the provisions of the act or any valid order of the Court of Industrial Relations or for influencing, impelling or compelling any other persons so to do.

Sec. 23 gives the right to recover in any court of competent jurisdiction the wages due on any award of the Industrial Court.

Though perhaps passed in an emergency, the act is not an emergency measure or a war measure, but, if valid, as general and permanent by its terms, as to the rights of plaintiffs in error, as any act could be. The act contains no words of limitation as to the state of public welfare, health or safety in its application.

From the above it will be seen that the act substitutes, "at the will of the Court of Industrial Relations," the judgment and processes of that body for the right to individually or collectively make agreements controlling hours, wages and working conditions. In the light of the sections of the act quoted above, and particularly Sec. 9, "liberty" to contract, "property," "due process," and "equal protection" as used in the Federal Constitution, 14th amendment, would become a mockery.

This court held in Coppage *v.* Kansas, 236 U. S., 1 (syllabus 2):

> "A statutory provision which is not a legitimate police regulation cannot be made such by being placed in the same act with a police regulation, or being enacted under a title that declares a purpose which would be a proper object for the exercise of that power."

(Syllabus 4:)

> "The several States are debarred by United States Constitution, 14th amendment, from striking down personal liberty or property rights, or materially restricting their normal exercise, except in so far as may be incidentally necessary for the accomplishment of some other and paramount object, and one that concerns the public welfare. The mere restriction of liberty or of property rights cannot, of itself, be denominated public welfare, and treated as a legitimate object of the police power."

This court in the Coppage case, *supra*, reviewed similar laws of Kansas and other States, all of which were, as there noted, unconstitutional, and refers particularly to Adair *v.* Kansas, 208 U. S., 161-174, which in part reads as follows:

> "While, as already suggested, the right of liberty and property guaranteed by the Constitution against deprivation without due process of law is subject to such reason-

able restraints as the common good or the general welfare may require, it is not within the functions of government—at least, in the absence of contract between the parties—to compel any person, in the course of his business and against his will, to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another. The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee. It was the legal right of the defendant, Adair—however unwise such a course might have been—to discharge Coppage because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so—however unwise such a course on his part might have been—to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labor organization. In all such particulars, the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land."

Also in Allgeyer *v.* Louisiana, 165 U. S., 578-589, this court said:

> "The liberty mentioned in the fourteenth amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned."

Speaking of this right to contract, as a property, it was said in Braceville Coal Co. *v.* People, 147 Ill., 66; 35 N. E., 62:

> "It is the right, not only to possess and enjoy it, but also to acquire it in any lawful mode, or by following any lawful industrial pursuit which the citizen, in the exercise of the liberty guaranteed, may choose to adopt. Labor is the primary foundation of all wealth. The property which one has in his own labor is the common heritage, and, as an incident to the right to acquire other property, the liberty to enter into contracts by which labor may be employed in such way as the laborer shall deem most beneficial, and of others to employ such labor is necessarily included in the constitutional guarantee."

It has been said:

> "Thus it is clear that one in the employ of another, under a contract terminable at will, or where the contract will terminate at a given time, has an absolute right to determine for himself, or agree with others at the termination of that contract, or at any time if terminable at will, to quit the employment and his motive for so doing is beyond inquiry."

And Hitchman Coal & Coke Company *v.* Mitchell, 245 U. S., 229-251, appears to support the above.

In Coffeyville Brick Co. *v.* Perry, 69 Kans., 297; 75 Pac., 848, the Supreme Court of Kansas said:

> "The right to follow any lawful vocation and to make contracts is as completely within the protection of the Constitution as the right to hold property free from unwarranted seizure or the liberty to go when and where one will. One of the ways of obtaining property is by contract. The right, therefore, to contract cannot be infringed by the legislature without violating the letter and spirit of the Constitution. Every citizen is protected in his right to work where and for whom he will. He may select not only his employer but also his associates. Any act of the legislature that would undertake to impose on an employer the obligation of keeping in his service one whom, for any reason, he should not desire, would be a

denial of his constitutional rights to make and terminate contracts and to acquire and hold property. * * * The business conducted by the defendant was its property and in the exercise of this ownership it is protected by the Constitution. It could abandon or discontinue its operation at pleasure. It had the right, beyond the possibility of legislative interference, to make any contract with reference thereto not in violation of law. In the operation of its property it may employ such persons as are desirable and discharge without reason those who are undesirable. It is their liberty to contract for the services of persons in any manner that is satisfactory to both. No legislative restriction can be imposed upon the lawful exercise of these rights.

"Within the past two decades there has been an epidemic of this class of legislation. New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, Missouri, Wisconsin, Colorado and California have similar statutory provisions and in such States where the constitutionality of these statutes has been before the courts, the law has been universally held to be a denial of the rights guaranteed by the provisions of the national and State constitutions."

Butchers Union S. H. & L. S. L. Co. *v.* Cresent City L. S. L. & S. H. Co., 111 U. S., 746.

Powell *v.* Pennsylvania, 127 U. S. 678.

Adams *v.* Tanner, 244 U. S., 590.

Truax *v.* Raich, 239 U. S., 33.
Hitchman Coal & Coke Co. *v.* Mitchell, 245 U. S., 229-251.
Colyer *v.* Skeffington, 265 Fed., 62.
State *v.* Julow, 129 Mo., 163.
Gillespie *v.* People, 188 Ill., 176.
State *ex rel.* Zillmer *v.* Kreutzberg, 114 Wis., 530.
People *v.* Marcus, 185 N. Y., 257.

POINT XII.

The Void Sections of the Act are so Inermingled with the Other Sections as to Cause the Whole Act to Fall.

It will be remembered that the act in question has since been amended by the Kansas legislature, and the public utilities and carriers are excluded from the jurisdiction of the Industrial Court. The latter act re-establishes the Public Utilities Commission and confers upon it the powers and duties of the act in question so far as they apply to carriers and public utilities (Special Session Laws, Kansas, 1921).

Again quoting from Connelly *v.* Union Sewer Pipe Co., *supra*, 184 U. S., 540-561, the court states:

> "The principles applicable to such a question are well settled by the adjudications of this court. If different sections of a statute are independent of each other, that which is unconstitutional may be disregarded, and valid sections may stand and

be enforced. But if an obnoxious section is of such import that the other sections without it would cause results not contemplated or desired by the legislature, then the entire statute must be held inoperative. The 1st section of the act herein questioned embraces by its terms *all* persons, firms, corporations, or associations of persons who combine their capital, skill, or acts for any of the purposes specified, while the 9th section declares that the statute shall not apply to agriculturalists or livestock dealers in respect of their products or stock in hand. If the latter section be eliminated as unconstitutional, then the act, if it stands, will apply to agriculturalists and livestock dealers. Those classes would in that way be reached and fined, when, evidently, the legislature intended that they should not be regarded as offending against the law even if they did combine their capital, skill, or acts in respect of their products or stock in hand. Looking, then, at all the sections together, we must hold that the legislature would not have entered upon, or continued the policy indicated by the statute unless agriculturalists and livestock dealers were excluded from its operation, and thereby protected from prosecution. The result is that the statute must be regarded as an entirety, and in that view it must be adjudged to be unconstitutional as denying the equal protection of the laws to those within its jurisdiction who are not embraced by the 9th section."

In *McFarland v. American Sugar Refining Co.*, *supra*, 241 U. S., 79, this court declared unconstitutional the whole act of the State of Louisiana seeking to regulate the industry of sugar refining, and stated (l. c., 87):

> "We agree with the court below that the act must fall as a whole as it falls in the sections without which there is no reason to suppose that it would have been passed."

The legislature cannot foreclose the courts in their determination as to whether parts or the whole of an act are unconstitutional.

Irrespective of the legislature's wording about presumptions that they would have passed the other sections that are not held invalid, it cannot be supposed that they would have passed this act if it did not relate to the various industries enumerated, or without the penalty sections, and did relate to the farmers, livestock raisers, and other lines of business and industry not included.

The whole act must therefore fall.

State *v.* Waters-Pierce Oil Co., 67 S. W., 1053.

Brown *v.* Jacobs Pharmacy Co., 41 S. E., 553; 115 Ga., 429.

State *v.* Cudahy, 83 Pac., 883; 33 Mont., 179.

CONCLUSION.

The plaintiffs in error respectfully submit that the District Court of Crawford County, Kansas, was without jurisdiction to issue its order commanding plaintiffs in error to forthwith appear and testify before the Court of Industrial Relations, and that the order was based upon an illegal and insufficient application, and the order therefore effected a denial of due process as guaranteed to plaintiffs in error by the 14th amendment to the Constitution of the United States.

Plaintiffs in error submit that the Court of Industrial Relations Act is void *ab initio;* that the Court of Industrial Relations has no legal existence, and that the order of the District Court of Crawford County, Kansas, is therefore void, and to punish plaintiffs in error for failing to appear before a body that has no legal existence is a further denial of due process and equal protection guaranteed to plaintiffs in error under the 14th amendment to the United States Constitution.

Plaintiffs in error further submit that the District Court of Crawford County, Kansas, by granting its order without notice or hearing of any kind being permitted or had, effected a denial of due process and equal protection to the plaintiffs in error, in contravention of the 14th amendment to the United States Constitution.

Plaintiffs in error further submit, in conclusion, that on the specification of errors and other points

hereinabove set out, the order of the court below should be reversed.

Respectfully submitted,

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ADDENDUM.

The Kansas Court of Industrial Relations.

Chapter 29, Special Session Laws of 1920.

An Act Creating the Court of Industrial Relations, Defining Its Powers and Duties and Relating Thereto, Abolishing the Public Utilities Commission, Repealing All Acts and Parts of Acts in Conflict Therewith, and Providing Penalties for the Violation of This Act.

Be it enacted by the Legislature of the State of Kansas:

Sec. 1. There is hereby created a tribunal to be known as the Court of Industrial Relations, which shall be composed of three judges who shall be appointed by the governor, by and with the advice and consent of the Senate. Of such three judges first appointed, one shall be appointed for a term of one year, one for a term of two years, and one for a term of three years, said terms to begin simultaneously upon qualification of the persons appointed therefor. Upon the expiration of the term of the three judges first appointed as aforesaid, each succeeding judge shall be appointed and shall hold his office for a term of three years and until his successor shall have been qualified. In case of a vacancy in the office of judge of said Court of Industrial Relations the governor shall appoint

his successor to fill the vacancy for the unexpired term. The salary of each of said judges shall be five thousand dollars per year, payable monthly. Of the judges first to be appointed, the one appointed for the three-year term shall be the presiding judge, and thereafter the judge whose term of service has been the longest shall be the presiding judge: Provided, That in case two or more of said judges shall have served the same length of time, the presiding judge shall be designated by the governor.

Sec. 2. The jurisdiction conferred by law upon the Public Utilities Commission of the State of Kansas is hereby conferred upon the Court of Industrial Relations, and the said Court of Industrial Relations is hereby given full power, authority and jurisdiction to supervise and control all public utilities and all common carriers as defined in sections 8329 and 8330 of the General Statutes of Kansas for 1915, doing business in the State of Kansas, and is empowered to do all things necessary and convenient for the exercise of such power, authority and jurisdiction. All laws relating to the powers, authority, jurisdiction and duties of the Public Utilities Commission of this State are hereby adopted, and all powers, authority, jurisdiction and duties by said laws imposed and conferred upon the Public Utilities Commission of this State relating to common carriers and public utilities are hereby imposed and conferred upon

the Court of Industrial Relations created under the provisions of this act; and in addition thereto said Court of Industrial Relations shall have such further power, authority and jurisdiction and shall perform such further duties as are in this act set forth, and said Public Utilities Commission is hereby abolished. That all pending action brought by or against the said Public Utilities Commission of this State shall not be affected, but the same may be prosecuted or defended by and in the name of the Court of Industrial Relations. Any investigation, examination, or proceeding had or undertaken, commenced or instituted by or pending before said Public Utilities Commission at the time of the taking effect of this act are transferred to and shall be continued and heard by the said Court of Industrial Relations hereby created under the same terms and conditions and with like effect as though said Public Utilities Commission had not been abolished.

Sec. 3. (*a*) The operation of the following named and indicated employments, industries, public utilities and common carriers is hereby determined and declared to be affected with a public interest and therefore subject to supervision by the State as herein provided for the purpose of preserving the public peace, protecting the public health, preventing industrial strife, disorder and waste, and securing regular and orderly conduct of the business directly affecting the living conditions of the

people of this State and in the promotion of the general welfare, to wit: (1) The manufacture or preparation of food products whereby in any stage of the process, substances are being converted, either partially or wholly, from their natural state to a condition to be used as food for human beings; (2) The manufacture of clothing and all manner of wearing apparel in common use by the people of this State whereby, in any stage of the process, natural products are being converted, either partially or wholly, from their natural state to a condition to be used as such clothing and wearing apparel; (3) The mining or production of any substance or material in common use as fuel either for domestic, manufacturing, or transportation purposes; (4) The transportation of all food products and articles or substances entering into wearing apparel, or fuel, as aforesaid, from the place where produced to the place of manufacture or consumption; (5) All public utilities as defined by section 8329, and all common carriers as defined by section 8330 of the General Statutes of Kansas of 1915.

(*b*) Any person, firm or corporation engaged in any such industry or employment, or in the operation of such public utility or common carrier, within the State of Kansas, either in the capacity of owner, officer, or worker, shall be subject to the provisions of this act, except as limited by the provisions of this act.

Sec. 4. Said Court of Industrial Relations shall have its office at the capital of said State in the city of Topeka, and shall keep a record of all its proceedings which shall be a public record and subject to inspection the same as other public records of this State. Said court, in addition to the powers and jurisdiction heretofore conferred upon, and exercised by, the Public Utilities Commission, is hereby given full power, authority and jurisdiction to supervise, direct and control the operation of the industries, employments, public utilities, and common carriers in all matters herein specified and in the manner provided herein, and to do all things needful for the proper and expeditious enforcement of all the provisions of this act.

Sec. 5. Said Court of Industrial Relations is hereby granted full power to adopt all reasonable and proper rules and regulations to govern its proceedings, the service of process, to administer oaths, and to regulate the mode and manner of all its investigations, inspections and hearings: Provided, however, That in the taking of testimony the rules of evidence, as recognized by the supreme court of the State of Kansas in original proceedings therein, shall be observed by said Court of Industrial Relations; and testimony so taken shall in all cases be transcribed by the reporter for said Court of Industrial Relations in duplicate, one copy of said testimony to be filed among the permanent records of said court, and the other to be

submitted to said supreme court in case the matter shall be taken to said supreme court under the provisions of this act.

Sec. 6. It is hereby declared and determined to be necessary for the public peace, health and general welfare of the people of this state that the industries, employments, public utilities and common carriers herein specified shall be operated with reasonable continuity and efficiency in order that the people of this State may live in peace and security, and be supplied with the necessaries of life. No person, firm, corporation, or association of persons shall in any manner or to any extent, willfully hinder, delay, limit or suspend such continuous and efficient operation for the purpose of evading the purpose and intent of the provisions of this act; nor shall any person, firm, corporation, or association of persons do any act or neglect or refuse to perform any duty herein enjoined with the intent to hinder, delay, limit or suspend such continuous and efficient operation as aforesaid, except under the terms and conditions provided by this act.

Sec. 7. In case of a controversy arising between employers and workers, or between groups or crafts of workers, engaged in any of said industries, employments, public utilities, or common carriers, if it shall appear to said Court of Industrial Relations that said controversy may endanger the continuity or efficiency of service of any of

said industries, employments, public utilities or common carriers, or affect the production or transportation of the necessaries of life affected or produced by said industries or employments, or produce industrial strife, disorder or waste, or endanger the orderly operation of such industries, employments, public utilities or common carriers, and thereby endanger the public peace or threaten the public health, full power, authority and jurisdiction are hereby granted to said Court of Industrial Relations, upon its own initiative, to summon all necessary parties before it and to investigate said controversy, and to make such temporary findings and orders as may be necessary to preserve the public peace and welfare and to preserve and protect the status of the parties, property and public interests involved pending said investigation and to take evidence and to examine all necessary records, and to investigate conditions surrounding the workers, and to consider the wages paid to labor and the return accruing to capital, and the rights and welfare of the public, and all other matters affecting the conduct of said industries, employments, public utilities or common carriers and to settle and adjust all such controversies by such findings and orders as provided in this act. It is further made the duty of said Court of Industrial Relations, upon complaint of either party to such controversy, or upon complaint of any two citizen taxpayers of the community in which such industries, employments, public utilities or com-

mon carriers are located, or upon the complaint of the Attorney General of the State of Kansas, if it shall be made to appear to said court that the parties are unable to agree and that such controversy may endanger the continuity or efficiency of service of any of said industries, employments, public utilities or common carriers, or affect the production or transportation of the necessaries of life affected or produced by said industries or employments, or produce industrial strife, disorder or waste, or endanger the orderly operation of such industries, employments, public utilities or common carriers, and thereby endanger the public peace or threaten the public health, to proceed and investigate and determine said controversy in the same manner as though upon its own initiative. After the conclusion of any such hearing and investigation, and as expeditiously as possible, said Court of Industrial Relations shall make and serve upon all interested parties its findings, stating specifically the terms and conditions upon which said industry, employment, utility or common carrier should be thereafter conducted in so far as the matters determined by said court are concerned.

Sec. 8. The Court of Industrial Relations shall order such changes, if any, as are necessary to be made in and about the conduct of said industry, employment, utility or common carrier, in the matters of working and living conditions, hours of

labor, rules and practices, and a reasonable minimum wage, or standard of wages, to conform to the findings of the court in such matters, as provided in this act, and such orders shall be served at the same time and in the same manner as provided for the service of the court's findings in this act: Provided, all such terms, conditions and wages shall be just and reasonable and such as to enable such industries, employments, utilities or common carriers to continue with reasonable efficiency to produce or transport their products or continue their operations and thus to promote the general welfare. Service of such order shall be made in the same manner as service of notice of any hearing before said court as provided by this act. Such terms, conditions, rules, practices, wages, or standard of wages, so fixed and determined by said court and stated in said order, shall continue for such reasonable time as may be fixed by said court, or until changed by agreement of the parties with the approval of the court. If either party to such controversy shall in good faith comply with any order of said Court of Industrial Relations for a period of sixty days or more, and shall find said order unjust, unreasonable or impracticable, said party may apply to said Court of Industrial Relations for a modification thereof and said Court of Industrial Relations shall hear and determine said application and make findings and orders in like manner and with like effect as originally. In such case the evidence taken and submitted in the original hearing may be considered.

Sec. 9. It is hereby declared necessary for the promotion of the general welfare that workers engaged in any of said industries, employments, utilities or common carriers shall receive at all times a fair wage and have healthful and moral surroundings while engaged in such labor, and that capital invested therein shall receive at all times a fair rate of return to the owners thereof. The right of every person to make his own choice of employment and to make and carry out fair, just and reasonable contracts and agreements of employment, is hereby recognized. If, during the continuance of any such employment, the terms or conditions of any such contract or agreement hereafter entered into, are by said court, in any action or proceeding properly before it under the provisions of this act, found to be unfair, unjust or unreasonable, said Court of Industrial Relations may by proper order so modify the terms and conditions thereof so that they will be and remain fair, just and reasonable and all such orders shall be enforced as in this act provided.

Sec. 10. Before any hearing, trial or investigation shall be held by said court, such notice as the court shall deem necessary shall be given to all parties interested by registered U. S. mail addressed to said parties to the post-office *of* the usual place of residence or business of said interested parties when same is known, or by the publication of notice in some newspaper of general

circulation in the county in which said industry or employment, or the principal office of such utility or common carrier is located, and said notice shall fix the time and place of said investigation or hearing. The costs of publication shall be paid by said court out of any funds available therefor. Such notice shall contain the substance of the matter to be investigated, and shall notify all persons interested in said matter to be present at the time and place named to give such testimony or to take such action as they may deem proper.

SEC. 11. Said Court of Industrial Relations may employ a competent clerk, marshal, shorthand reporter, and such expert accountants, engineers, stenographers, attorneys and other employees as may be necessary to conduct the business of said court; shall provide itself with a proper seal and shall have the power and authority to issue summons and subpoenas and compel the attendance of witnesses and parties and to compel the production of the books, correspondence, files, records, and accounts of any industry, employment, utility or common carrier, or of any person, corporation, association or union of employees affected, and to make any and all investigations necessary to ascertain the truth in regard to said controversy. In case any person shall fail or refuse to obey any summons or subpoena issued by said court after due service then and in that event said court is hereby authorized and empowered to take proper proceedings in any court of competent jurisdiction

to compel obedience to such summons or subpoena. Employees of said court whose salaries are not fixed by law shall be paid such compensation as may be fixed by said court, with the approval of the governor.

Sec. 12. In case of the failure or refusal of either party to said controversy to obey and be governed by the order of said Court of Industrial Relations, then and in that event said court is hereby authorized to bring proper proceedings in the Supreme Court of the State of Kansas to compel compliance with said order, and in case either party to said controversy should feel aggrieved at any order made and entered by said Court of Industrial Relations, such party is hereby authorized and empowered within ten days after service of such order upon it to bring proper proceedings in the Supreme Court of the State of Kansas to compel said Court of Industrial Relations to make and enter a just, reasonable and lawful order in the premises. In case of such proceedings in the supreme court by either party, the evidence produced before said Court of Industrial Relations may be considered by said supreme court, but said supreme court, if it deem further evidence necessary to enable it to render a just and proper judgment, may admit such additional evidence in open court or order it taken and transcribed by a master or commissioner. In case any controversy shall be taken by either party to the Supreme Court of the State of Kansas under

the provisions of this act, said proceedings shall take precedence over other civil cases before said court, and a hearing and determination of the same shall be by said court expedited as fully as may be possible consistent with a careful and thorough trial and consideration of said matter.

Sec. 13. No action or proceeding in law or equity shall be brought by any person, firm or corporation to vacate, set aside, or suspend any order made and served as provided in this act, unless such action or proceeding shall be commenced within thirty days from the time of the service of such order.

Sec. 14. Any union or association of workers engaged in the operation of such industries, employments, public utilities or common carriers, which shall incorporate under the laws of this State shall be by said Court of Industrial Relations considered and recognized in all its proceedings as a legal entity and may appear before said Court of Industrial Relations through and by its proper officers, attorneys or other representatives. The right of such corporations, and of such unincorporated unions or associations of workers, to bargain collectively for their members is hereby recognized: Provided, That the individual members of such unincorporated unions or associations, who shall desire to avail themselves of such right of collective bargaining, shall appoint in writing some officer or officers of such union or association, or some other

erson or persons as their agents or trustees with uthority to enter into such collective bargains and o represent each and every of said individuals in ll matters relating thereto. Such written appoint- ent of agents or trustees shall be made a perma- ent record of such union or association. All such ollective bargains, contracts, or agreements shall e subject to the provisions of section nine of this ct.

Sec. 15. It shall be unlawful for any person, firm r corporation to discharge any employee or to dis- riminate in any way against any employee be- ause of the fact that any such employee may estify as a witness before the Court of Industrial elations, or shall sign any complaint or shall be any way instrumental in bringing to the atten- on of the Court of Industrial Relations any mat- r of controversy between employers and em- loyees as provided herein. It shall also be unlaw- l for any two or more persons, by conspiring or onfederating together, to injure in any manner ny other person or persons, or any corporation, in is, their, or its business, labor, enterprise, or peace nd security, by boycott, by discrimination, by icketing, by advertising, by propaganda, or other eans, because of any action taken by any such erson or persons, or any corporation, under any rder of said court, or because of any action or roceeding instituted in said court, or because any ch person or persons, or corporation, shall have

invoked the jurisdiction of said court in any matter provided for herein.

Sec. 16. It shall be unlawful for any person, firm, or corporation engaged in the operation of any such industry, employment, utility, or common carrier willfully to limit or cease operations for the purpose of limiting production or transportation or to affect prices, for the purpose of avoiding any of the provisions of this act; but any person, firm or corporation so engaged may apply to said Court of Industrial Relations for authority to limit or cease operations, stating the reasons therefor, and said Court of Industrial Relations shall hear said application promptly, and if said application shall be found to be in good faith and meritorious, authority to limit or cease operations shall be granted by order of said court. In all such industries, employments, utilities or common carriers in which operation may be ordinarily affected by changes in season, market conditions, or other reasons or causes inherent in the nature of the business, said Court of Industrial Relations may, upon application and after notice to all interested parties, and investigation, as herein provided, make orders fixing rules, regulation and practices to govern the operation of such industries, employments, utilities or common carriers for the purpose of securing the best service to the public consistent with the rights of employers and employees engaged in the operation of such industries, employments, utilities or common carriers.

SEC. 17. It shall be unlawful for any person, firm or corporation, or for any association of persons, to do or perform any act forbidden, or to fail or refuse to perform any act or duty enjoined by the provisions of this act, or to conspire or confederate with others to do or perform any act forbidden, or to fail or refuse to perform any act or duty enjoined by the provisions of this act, or to induce or intimidate any person, firm or corporation engaged in any of said industries, employments, utilities or common carriers to do any act forbidden, or to fail or refuse to perform any act or duty enjoined by the provisions of this act, for the purpose or with the intent to hinder, delay, limit, or suspend the operation of any of the industries, employments, utilities or common carriers herein specified or indicated, or to delay, limit, or suspend the production or transportation of the products of such industries, or employments, or the service of such utilities or common carriers: Provided, That nothing in this act shall be construed as restricting the right of any individual employee engaged in the operation of any such industry, employment, public utility, or common carrier to quit his employment at any time, but it shall be unlawful for any such individual employee or other person to conspire with other persons to quit their employment or to induce other persons to quit their employment for the purpose of hindering, delaying, interfering with, or suspending the operation of any of the industries, employments, public utilities,

or common carriers governed by the provisions of this act, or for any person to engage in what is known as "picketing" or to intimidate by threats, abuse, or in any other manner, any person or persons with intent to induce such person or persons to quit such employment, or for the purpose of deterring or preventing any other person or persons from accepting employment or from remaining in the employ of any of the industries, employments, public utilities, or common carriers governed by the provisions of this act.

Sec. 18. Any person wilfully violating the provisions of this act, or any valid order of said Court of Industrial Relations, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction of this State shall be punished by a fine of not to exceed $1,000, or by imprisonment in the county jail for a period of not to exceed one year, or by both such fine and imprisonment.

Sec. 19. Any officer of any corporation engaged in any of the industries, employments, utilities or common carriers herein named and specified, or any officer of any labor union or association of persons engaged as workers in any such industry, employment, utility or common carrier, or any employer of labor, coming within the provisions of this act, who shall willfully use the power, authority or influence incident to his official position, or to his po

sition as an employer of others, and by such means shall intentionally influence, impel, or compel any other person to violate any of the provisions of this act, or any valid order of said Court of Industrial Relations, shall be deemed guilty of a felony and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine not to exceed $5,000, or by imprisonment in the State penitentiary at hard labor for a term not to exceed two years, or by both such fine and imprisonment.

Sec. 20. In case of the suspension, limitation or cessation of the operation of any of the industries, employments, public utilities or common carriers affected by this act, contrary to the provisions hereof, or to the orders of said court made hereunder, if it shall appear to said court that such suspension, limitation, or cessation shall seriously affect the public welfare by endangering the public peace, or threatening the public health, then said court is hereby authorized, empowered and directed to take proper proceedings in any court of competent jurisdiction of this State to take over, control, direct and operate said industry, employment, public utility or common carrier during such emergency: Provided, That a fair return and compensation shall be paid to the owners of such industry, employment, public utility or common carrier, and also a fair wage to the workers engaged therein, during the time of such operation under the provisions of this section.

Sec. 21. When any controversy shall arise between employer and employee as to wages, hours of employment, or working or living conditions, in any industry not hereinbefore specified, the parties to such controversy may, by mutual agreement, and with the consent of the court, refer the same to the court of Industrial Relations for its findings and orders. Such agreement of reference shall be in writing, signed by the parties thereto; whereupon said court shall proceed to investigate, hear, and determine said controversy as in other cases, and in such case the findings and orders of the Court of Industrial Relations as to said controversy shall have the same force and effect as though made in any essential industry as herein provided.

Sec. 22. Whenever deemed necessary by the Court of Industrial Relations, the court may appoint such person, or persons, having a technical knowlege of bookkeeping, engineering, or other technical subjects involved in any inquiry in which the court is engaged, as a commissioner for the purpose of taking evidence with relation to such subject. Such commissioner when appointed shall take an oath to well and faithfully perform the duties imposed upon him, and shall thereafter have the same power to administer oaths, compel the production of evidence, and the attendance of witnesses as the said court would have if sitting in the same matter. Said commissioner shall receive such compensation as may be provided by law or by the order of said court, to be approved by the governor.

Sec. 23. Any order made by said Court of Industrial Relations as to a minimum wage or a standard of wages shall be deemed *prima facie* reasonable and just, and if said minimum wage or standard of wages shall be in excess of the wages theretofore paid in the industry, employment, utility or common carrier, then and in that event the workers affected thereby shall be entitled to receive said minimum wage or standard of wages from the date of the service of summons or publication of notice instituting said investigation, and shall have the right individually, or in case of incorporated unions or associations, or unincorporated unions or associations entitled thereto, collectively, to recover in any court of competent jurisdiction the difference between the wages actually paid and said minimum wage or standard of wages so found and determined by said court in such order. It shall be the duty of all employers affected by the provisions of this act, during the pendency of any investigation brought under this act, or any litigation resulting therefrom, to keep an accurate account of all wages paid to all workers interested in said investigation or proceeding: Provided, That in case said order shall fix a wage or standard of wages which is lower than the wages theretofore paid in the industry, employment, utility or common carrier affected, then and in that event the employers shall have the same right to recover in the same manner as provided in this section with reference to the workers.

Sec. 24. With the consent of the governor, the judges of said Court of Industrial Relations are hereby authorized and empowered to make, or cause to be made, within this State or elsewhere, such investigations and inquiries as to industrial conditions and relations as may be profitable or necessary for the purpose of familiarizing themselves with industrial problems such as may arise under the provisions of this act. All the expenses incurred in the performance of their official duties by the individual members of said court and by the employees and officers of said court, shall be paid by the State out of funds appropriated therefor by the legislature, but all warrants covering such expenses shall be approved by the governor of said State.

Sec. 25. The rights and remedies given and provided by this act shall be construed to be cumulative of all other laws in force in said State relating to the same matters, and this act shall not be interpreted as a repeal of any other act now existing in said State with reference to the same matters referred to in this act, except where the same may be inconsistent with the provisions of this act.

Sec. 26. The provisions of this act and all grants of power, authority and jurisdiction herein made to said Court of Industrial Relations shall be liberally construed and all incidental powers necessary to carry into effect the provisions of this act are hereby expressly granted to and conferred upon said Court of Industrial Relations.

Sec. 27. Annually and on or before January first of each year, said Court of Industrial Relations shall formulate and make a report of all its acts and proceedings, including a financial statement of expenses, and shall submit the same to the governor of this State for his information. All expenses incident to the conduct of the business of said Court of Industrial Relations shall be paid by the said court on warrants signed by its presiding judge and clerk, and counter-signed by the governor and shall be paid out of funds appropriated therefor by the legislature. The said Court of Industrial Relations shall, on or before the convening of the legislature, make a detailed estimate of the probable expenses of conducting its business and proceedings for the ensuing two years, and attach thereto a copy of the reports furnished the governor, all of which shall be submitted to the governor of this State and by him submitted to the legislature.

Sec. 28. If any section or provision of this act shall be found invalid by any court, it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section or provision, and the act as a whole shall not be declared invalid by reason of the fact that one or more sections or provisions may be found to be invalid by any court.

Sec. 29. All acts and parts of acts in conflict herewith are hereby repealed.

Sec. 30. This act shall take effect and be in force from and after its publication in the official State paper.

Laws of Kansas, 1921.

State Boards and Commissions.

CHAPTER 260.

Establishing and Relating to a Public Utilities Commission. Senate Bill, No. 217.

An Act Establishing and Relating to a Public Utilities Commission.

Be it enacted by the Legislature of the State of Kansas:

Section 1. A Public Utilities Commission is hereby constituted and created, which shall be composed of three commissioners, who shall be appointed by the governor, by and with the advice and consent of the senate. Of such three persons first appointed, one shall be appointed and designated to serve for a term of one year, one for a term of two years, and one for a term of three years, said terms to begin upon the qualification of the persons appointed thereto. Upon the expiration of the terms of the three commissioners first to be appointed, as aforesaid, each commissioner shall be appointed and shall hold his office for a term of three years and until his successor

l have been appointed and qualified. In case vacancy in the office of any commissioner, the ernor shall appoint his successor to fill the mey for the unexpired term. The salary for commissioner shall be five thousand dollars year. Of the commissioners first to be apnted, the one appointed for the three-year term ll be the presiding member, and thereafter the mmissioner whose term of service has been the gest shall be the presiding member: *Provided*, t, in case two or more of said commissioners ll have served the same length of time, the preng member shall be designated by the governor: *vided*, That no person shall be eligible to hold h office while filling the office of a member of legislature of the State of Kansas.

ction 2. All of the powers and duties conred and imposed upon the present Court of Intrial Relations, relating to public utilities, as ned in sections 8328, 8329 and 8330 of the Gen- Statutes of 1915, are hereby conferred and osed on and entrusted to the said Public Utili- Commission. All acts relating to the former blic Utilities Commission, and powers, duties, ers and employees provided by law prior to uary 24, 1921, and all statutes relating to the mer Public Utilities Commission prior to the -named date, shall apply to the Public Utilities mmission created and established in section 1 his act as fully as though herein re-enacted, it

being the intent of this act to recreate and re-establish the Public Utilities Commission existing prior to the enactment or taking effect of chapter 29 of the Special Session Laws of 1920.

Section 3. The said Public Utilities Commission shall appoint a secretary, and he shall receive the same salary as is now prescribed by law for the clerk of the Court of Industrial Relations, and he shall have the powers and perform the duties prescribed by the said Public Utilities Commission.

Section 4. All pending actions brought by or against the former Public Utilities Commission or against the Court of Industrial Relations with reference to any order made affecting the public utilities of this State shall not be affected by this act, but may be prosecuted or defended by and in the name of the Public Utilities Commission of the State of Kansas. Any investigation, examination or proceeding had or undertaken, commenced or instituted or pending before the Court of Industrial Relations at the time of the taking effect of this act, instituted or initiated under the provisions of sections 8328, 8329 and 8330, General Statutes of 1915, or acts amendatory or supplemental thereto, are transferred to and shall be continued and heard by the said Public Utilities Commission hereby created, under the same terms and conditions and with like effect as though this Public Utilities Commission had not been established and created.

Section 5. All acts or parts of acts in conflict with this act are hereby repealed.

Section 6. This act shall take effect and be in force from and after its publication in the official State paper.

Approved February 19, 1921.

Published in official State paper March 15, 1921.

Court of Industrial Relations Act approved on January 23, 1920, and published January 24, 1920.

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IN THE

Supreme Court of the United States

Of America.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

No. 27944.

Term No. 154.

ALEXANDER HOWAT, et al., Plaintiffs in Error.

vs.

STATE OF KANSAS, Defendant in Error.

Separate Brief of F. Dumont Smith,

Of Counsel for Defendant in Error.

F. DUMONT SMITH,
Hutchinson, Kansas,
Of Counsel for Defendant in Error.

KANSAS LAW PUB. CO., TOPEKA

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Separate Brief of F. Dumont Smith.

Of Counsel for Defendant in Error.

BRIEF AND ARGUMENT OF F. DUMONT SMITH.

Alexander Howat in these cases is merely a nominal defendant. The real defendant is the Industrial Court Law of Kansas, which stands here charged with crimes and mis-

prisions, which if justly charged deserves capital punishment, legal extinction. We do not particularly care whether Alexander Howat goes free or whether he is incarcerated for the balance of his term and again for direct contempt of the District Court of Crawford County. He is a negligable factor. The operation of this law has broken him, destroyed his power. His sceptor has departed. He is an outlaw from his own fellowship. In the ranks of labor he is *spurlos versenkt*. He will never call another strike. But this law matters a great deal to us, and I shall address myself to the consideration of that law, paying little regard to the nominal defendants.

In this great court, with its dual aspect, its double function, partly judicial, partly political, there is a curious periodicity in the recurrence of great political, sociological questions at this bar; questions that have shaken this country from its center to its circumference; questions which have formed and dissolved great political parties; questions which have even sown the dragon's teeth of civil war. They appear here about once in the life of a biblical generation, about every twenty-five years. About 1804, beginning with Burr v. Madison, the question of nationality came before this court, whether this is a nation or a loose confederation of independent states, soluble at the will of any. Through the genius of Marshall nationality prevailed, and those decisions were affirmed in the final arbitrament of arms at Appomattox.

Twenty-five years later came the question of whether the federal government could engage in works of internal improvement within the limits of the states; a free or restricted

interpretation of the general welfare clause. The liberal interpretation prevailed, and as a result today the functions of the general government have been so vastly extended that they touch more or less intimately the daily life of every citizen.

Twenty-five years later came the slavery question, the power of Congress to legislate slavery in or out of the territories of the United States, the Dred Scott Decision. That decision was reversed by the inexorable logic of the sword.

Twenty-five years later appeared that series of cases under the Fourteenth Amendment, at first thought merely to be the Black Man's Magna Charta, which later this court broadened to give every person—and in person is included bodies corporate—the protection of the federal government everywhere beneath the flag. The first restriction on the omnipotent power of the state over its own citizens, establishing a new citizenship, national, independent of state citizenship.

Almost exactly twenty-five years later this court was called upon to interpret and apply the Sherman Act. Rightly or wrongly, the people had come to believe that these great aggregations of capital, gigantic octupi, (I am somewhat doubtful about that plural) their digestive organs in New Jersey and their tentacles in every town and hamlet, were inimical to their prosperity and dangerous to their political liberty. And now here today, at the end of another biblical generation, for the sixth time appears the political and sociological question of the relations of capital and labor, which we think hardly less important than any that has preceded it. It will be observed that the pre-

cession of the equinoxes, the recurrence of the tides are hardly more regular than the resurgence of these great questions at this bar.

The relations of capital to labor in the last thirty years so far from improving have become more bitter, the situation more acute. It is fair to say that these relations have produced and continue to produce a condition of civil war, not general, sporadic, intermittent but fairly continuous, prevailing somewhere in the country practically all of the time; civil war that involves bloodshed, the destruction of property, the killing, maiming and crippling of individuals. It would be fair to say that these conflicts, this quasi civil war of the last thirty years, has caused more bloodshed and destruction of property than all the battles of the Revolutionary War.

Arbitration has been tried in vain. The vice of arbitration is twofold. First, it is usually sought too late. Second, arbitration involves the presence in the arbitral body of representatives of the contending interests. No attempt is made by such bodies to arrive at the truth and justice of the matter, whether the employer is profiteering and could pay a higher wage; whether the employee is getting a living wage and giving an honest day's work for that wage. The result is not judicial. It is a diplomatic peace, imposed by the stronger upon the weaker. If the employer is strong, rich the employees poorly organized or with a small strike fund, the employer wins. If not he loses. In the meanwhile, the general public has seen business stagnated, property bearing no relation to the strike destroyed, traffic interrupted, public peace widely breached, the public

health endangered, and the public must ultimately pay the cost, while these contending factions disregardful of all rules of law and justice, contend for victory with armed hands in the midst of a peaceful community. If this be the only remedy, if there is no other solvent for these labor troubles save violence, bloodshed and destruction, waged until one side or the other is conquered, one must contemplate the future of our country with the most profound foreboding. This law, which stands here arraigned at this bar, will be found to be the first serious, and sane attempt to settle these controversies by Anglo-Saxon methods, by machinery that is juridical, by processes and results that are judicial. While an administrative body, it proceeds upon judicial lines. It interferes before the conflict has become overt. It inquires. It examines. It ascertains and determines who is right and who is wrong; who should yield, if either or both, to do justice between the employer and the employee.

This Industrial Court as an administrative body exercises a measure of the police power of the State of Kansas, and before going further I desire to dwell briefly upon this police power. Not for the information of this court—that would be presumptuous—but briefly to illuminate the darkened minds of opposing counsel, who know or seem to know so little of this power.

Edmond Burke, in one of those sublime orations, which emptied the House of Commons, but which will be read as long as the English language endures, declared that the whole state and power of England, its king, its lords, its Commons, its army and its navy, were instituted, ordained

and maintained for the sole purpose of getting twelve honest men into the jury box; a government by law rather than arbitrary power. But Burke's definition was too narrow too restricted. Civilized governments are instituted and maintained for the exercise of the police power, which is the ultimate end and object the crown and flower of all civil government, because it deals with and protects all that is meant in that broad phrase, "the general welfare." Some text writers have been misled by the dictum of an early English judge to the effect that the administration of justice in England was an integral part of its constitution, while the police power was the king's prerogative, thus assuming there is some distinction between the exercise of police power and the operation of the courts. Not so. This great Court with its far-reaching jurisdiction and almost unimaginable prerogative, draws from the same reservoir as the remotest justice of the peace, the pettiest police magistrate, from the same reservoir of power as this Industrial Court. But when the courts have functioned and administered justice, there remains a vast reserve of the police power, which deals with the public health, preservation of the public peace, the public morals, education, and even the comfort and convenience of the citizens.

There is this important distinction between the exercise of the police power by the courts and by the administrative arm. The court is inert until its jurisdiction is sought and invoked by appropriate formulae. A court cannot go out and seize a criminal and try him until a complaint has been presented and a warrant issued. The court cannot collect your debt until a complaint has been filed against

the debtor. A court cannot do equity until the equitable jurisdiction has been set in motion by an appropriate Bill. But the administrative arm acts *ex propria vigore*. It acts without complaint, without warning and even without investigation. It may act upon suspicion or surmise. It has inquisitorial power, power to subpoena witnesses and compel the production of books and papers without any complaint being filed, wherein it differs from a court. You cannot swear a witness in court until there is a legal controversy before the court. The exercise of the police power by the administrative arm is swifter of execution, speedier in action and presents many advantages over the rule hampered action of the court. You cannot confer administrative functions upon a court, but you can confer quasi judicial powers upon an administrative body, the power to investigate, to take evidence, to deliberate, to weight and to find the facts. These powers can be conferred upon a Legislative Tribunal, or upon its arm, a committee sitting for the purpose of investigation.

The administrative arm can anticipate labor troubles and strikes by investigating the conditions surrounding the mine or factory where disputes, and industrial troubles are reaching an acute stage. Before a strike has been called before there is an overt act of industrial warfare, it can publish its findings so that the public will know whether the worker is getting a fair wage, working reasonable hours, giving an honest day's work for his wage, and so that the public can know whether the business of the employer can reasonably stand shorter hours or an advance in wages without increasing the price that he charges the consumer.

be true, if these enumerated powers of the court were all its powers, these things were all that it could do, it would be worth the cost. Publicity, like the sunlight, is a great germicide. No sociological wrong can stand the light of day. The truth will kill it.

This police power greets you at the threshold of life, where it prescribes the qualifications of the doctor and the nurse who bring you into the world. It follows you to the tomb, where it regulates the cemetery where your ashes are finally interred. And during the interval from the first puny wail to the last sigh it attends you at every step of the dying, it surrounds your every moment with its invisible, ever present protection. Waking or sleeping alone or in company, in the crowded street or on the lonely prairie, the police power is there, not merely protecting your life, your liberty and your property, but protecting your health, the morals of your community and safeguarding the comfort and convenience of your daily life.

The police power is the only power that can take and destroy private property for public benefit, without compensation to the owner, as where it destroys an unsafe or unsanitary building. It is the only power that can destroy the sanctity of a contract, which the Constitution says shall be held sacred. It is the only power that can override a treaty, which the Constitution says shall be the supreme law of the land, as was held in the New Orleans quarantine cases. It is the most comprehensive and the most minute of all the powers of government. It protects the cattle of the Kansas farmer against Texas fever, and

otects the migratory birds against undue and continuous
aughter in their seasonal flights. It regulates the length
time that the mill whistle may blow, without undue dis-
bance to the people and quiet of the neighborhood, and
stops the great liner with its thousands of passengers,
the threshold of the country, until every individual has
wen his right to be admitted.

t is the most flexible of the governmental powers, ad
ting itself almost instantly to every change of conditions.
e police power which adequately regulated the move-
nts of the stage coach, was found sufficient, without any
ension of power, by merely adapting established prin-
les to new conditions, to regulate the railroads, the
amboats and the automobile, and shortly it will reach
long arm into the sky and regulate the air lanes and
aviator. Every time a new and dangerous mechanism
nvented, whether for labor or pleasure, the police power
ed its control and regulates it for the safety of the
lic.

adapts itself to every situation. The police power
h would suffice for a country village would be utterly
fficient for a great city. The act which is innocuous
farm becomes a public nusiance in a town. So to a
large extent the police power must be local in its
rol and local in its operation. Kansas could not wisely
cise police power in New York, nor could New York
any degree of success regulate the police power of
sas. It was for that very reason the founders retained
e various states all of the police power of government,

except such as is absolutely necessary to carry out the granted powers, a grant by implication.

This is not, if the Court please, an argument for local option or light wines and beer. It is an argument for the fact that we in Kansas know better the requisites, the needs of the exercise of police power, than the general government can; and when we have exercised that police power it should not be stricken down by judicial sentence except upon the clearest and most irrefutable grounds, considerations which compel and constrain the consciences of the Court to so hold.

Its two greatest functions are the protection of the public health and the public peace, and these are the foundations upon which, mainly, the power of the Industrial Court rests. In the first place, the Legislature defines the necessaries of life as food, fuel and clothing. This is not a legislative fiat; it simply recognizes the primal necessities of life in the temperate zone. This court in Jones v. City of Portland, 245 U. S. 217, took judicial notice of the fact that fuel is a necessary of life in the latitude of Portland; that for that reason it is so impressed with the public interest that the city itself may lawfully engage in supplying wood and coal for its citizens just as it may supply water. What is fuel more essential than food or clothing? What should it avail a man to have a well-filled coal bin if his larder be empty or his family naked.

A man may live, love and be happy in a tent, a cave, or a dug-out; but to be well, to be healthy, he must have food, fuel and clothes. The State is not concerned with whether a man has one suit of clothes, or a dozen; one meal a day,

or five. It is not concerned with whether he has fuel enough to warm a twenty-room mansion or a two-room cot. But it is concerned, and the public health demands, that every family shall have so much food, so much fuel and so much clothing as shall maintain their health, keep them in decent comfort and provide for the sturdy upbringing of the future of the race.

Whenever a strike, a shut-down, or a lock-out threatens such a shortage in these necessities as endangers the public health, then the State has the same interest in the strike or the lock-out that it has in an approaching epidemic of contagious disease. The State need not wait until the smallpox or yellow fever has invaded a community. It may quarantine against these evils far in advance, prohibit persons coming from an infected community, from entering the district where the public are yet whole. It may shut up an infected family within its dwelling, indefinitely, to protect the whole from the infection. This prohibition against any interference with the continued adequate production and distribution of the necessaries of life applies equally to the employer as well as the employee.

The power thus asserted in the law is seriously questioned. But you will find, in examining the law, that every power of doubtful constitutionality is segregated, placed in a section by itself, so that, if any power asserted by the court is denied by the Supreme Court of the United States, the other powers remain. The constitutionality of the court and its inquisitorial power are unassailable. Of course, under this branch of the court's power, only such industries are affected as produce and distribute these nec-

essaries of life. A strike in a match factory, or a chewing gum factory, would not come within the purview of the court under this head.

But there is another police power equally as important, and that is the protection of the public peace. If a strike of any considerable size endangers the public peace, the police reserves are put on duty; the sheriff swears in a swarm of deputies; frequently the militia is called out nearly always there is bloodshed, loss of life, destruction of property in fact, these things are almost inevitable. They have come to be regarded as an integral part of the strike, inevitable factors of this private warfare, just as the killing and maiming of men is inevitable in public warfare. The state has a right to anticipate violence and prevent it, as well as punish it after the act. If I threaten you with violence you can have me bound over to keep the peace. So the law says that whenever there is a strike, or the danger of a strike, that threatens the public peace of a community, this court shall at once begin to function, it shall examine the merits of the controversy, it shall find, determine and punish who is right and who is wrong; it will ascertain and announce whether the workmen's hours shall be shorter, whether his wage shall be higher, whether the employer of the working man is entitled to a higher price for his product in order to pay such high wage.

The history of civilized man is a record of the continuous yielding of private right to public right, of individual freedom to the general welfare. From the day the first savage became a member of a family on through the growth of the clan, the tribe and the race, the individual has dwind

led and society has expanded. This growth of public right, more and more limiting and restricting private right, is the most striking fact of the last fifty years. The increasing complexity of civilization, the growth of population and the constantly accelerating urbanization of this country has gone hand in hand with the development of the police power; not in the invention of new principles of police power, but in the application to more and more subjects as such application becomes necessary to the general welfare. When the periphery of my private right impinges upon the periphery of your private right, each ceases to expand; they become stationary.

Under the law these rights, the one private right as against another, have been stationary for generations. The law of private rights has been crystallized for hundreds of years, but when the periphery of my private right or your private right impinges upon the periphery of the public right, my private right not only ceases to expand and becomes stationary, but dwindles. The public right more and more grows and encroaches upon my private right.

The extension of public right as against the private right, of which I have spoken, is clearly marked in the changing views of the United States Supreme Court. Munn v. Illinois, 94 U. S. 113, was an outpost case. Up to that time it had been generally thought by the lawyers and generally held by the courts of this country that the right to regulate depended upon the right of the public to demand service; that wherever there was freedom of contract in a certain industry, wherever the corporation could grant or refuse its service, there was no right of regulation. In

Munn v. Illinois, for the first time this distinction was impliedly denied, although not in expressed terms; the act which made the elevators, sought to be regulated by the acts in question, public elevators, provided that they must receive wheat by whomever tendered, so that the distinction was not made clear.

In Budd v. State of New York, 142 U. S. 517, decided in 1892, this right of regulation of elevators in the State of New York was again upheld. In this case Judge Brewer filed a dissent, one of the strongest of his great opinions. He attempted to distinguish between "public use" and "public interest in a use." His opinion is a striking one. It deplores this modern tendency of the police law. He predicted in the gloomiest terms the destruction of our system of government, the downfall of society, if these two decisions of Munn v. Illinois and Budd v. New York were permitted to stand and become the law of the land. For a long time thereafter many courts followed the dissenting opinion of Judge Brewer and held with him that only where a corporation was performing a public service, such as the railroad, or where it had the public grant of a franchise which amounted to a monopoly, could this power of regulation be exercised. I think it fair to say that the general thought of the lawyers of the country was along this line; that regulation was correlative to and dependent upon the public right to demand service regardless of persons.

Finally in 1914, in the case of The German Alliance Insurance Company v. Kansas, 233 U. S. 389, the court definitely considered and rejected this proposition. The court

there held that the test of whether an industry was impressed with the public interest was not that it had a franchise granting a monopoly or that it performed a governmental function such as interstate commerce, but that the people were so largely interested in it, that the nature of the business was such that a court could say definitely that it was so impressed with the public interest as that the state might regulate it; this with reference to the business of writing fire insurance, purely a personal contract, a service that the insurance company might give or withhold. Surely if the business of writing fire insurance is impressed with the public interest, how much more so the production and distribution of food, fuel and clothing.

In the case of Coal Coal ray v. Fuel Commission, 258 Federal 563, there is a striking discussion of the growth of this police power, and the court there upheld the fixing of coal prices by the Indiana Coal Commission. The court said:

> "The State, under its police power, *can lay its hand upon the coal-mining industry*. There may be, today, wholly private businesses that we would have no hesitancy, today, in saying were beyond the reach of the legislature; but our sons or our grandsons may find a very urgent necessity for including that class of businesses, or enterprises, within the regulation of the state, under its police power."

That case, upholding price fixing in this essential industry, was another landmark. It emphasizes what I desire to say here, that so far as I have read, no court and no text writer has ever attempted to set a definite boundary

or limit upon the exercise of the police power. So far as I know, its only circumscriptions are that the regulation or ordinance or act must be reasonable and must tend to the end sought to be effectuated.

In Wilson v. New, 243 U. S. 33, upholding the Adamson Act, the supreme court took judicial notice of the fact that there was a strike impending, had already been called to become effectual on a certain date; that this strike would tie up all the railroads of the country; that as a result of the absolute tie up of distribution of the necessaries of life, public health would inevitably be impaired and public peace probably disturbed. It placed its approval of the Act upon these grounds. While per se the federal government has no police power, that being all reserved to the states, it has such incidental police power, such implied police power as is necessary to carry out powers directly granted. This police power was exercised in the Debs case as incidental to the control of interstate commerce.

Wilson v. New marked at that time the farthest advance of the police power in federal decisions. It was another outpost case.

The dissenting opinion calls attention to the fact that if the government could say to the railroad employer that when the employee had worked eight hours he had earned a day's pay, it could with equal propriety say to the employee that he could not collect a day's pay until he had worked eight hours, regardless of his agreement with his employer; that such power of regulation could work both ways. In other words, the power to prescribe an eight-hour day against the employer includes the power to prescribe an

eight-hour day against the employee. This goes further than the Industrial Court Law.

That decision was based upon the fact that the distribution of the necessaries of life was essential to the public health; that distribution is secondary. Production is the primary essential. Until there has been production there can be no distribution. All the railroads in the United States cannot furnish one bottle of milk for a starving child until the cow has functioned. All the railroads in the United States cannot furnish one loaf of bread until the farmer, miller and baker have coordinated in their work of production. How absurd then, how utterly futile to say that there is a public interest in distribution, that distribution is so impressed with public necessity that the state may control and regulate, and to deny that the production of these necessities of life, these essentials to public health, are not within the purview of the police power. In most communities distribution could be fairly well carried on if the railroads stopped by auto trucks and horse-drawn vehicles; but without production there could be no distribution whatever.

So far back as 1820 Congress, which exercises full police power over the District of Columbia, regulated the size and quality of a loaf of bread, the rates of hackney coaches and the prices for sweeping chimneys. In 1841 the city of Mobile regulated the size, quality and price of a loaf of bread, and this ordinance was upheld by the Alabama Supreme Court. 3 Ala. 140.

Mr. Gompers has spoken of the "God-given right to strike." With all deference to the religious opinions of

any, I know of no such right. The tablets that were handed down amidst the thunders of Sinai are not today self-executing. They require a man-made mandate to effectuate them. The right to strike has been tacitly recognized by the courts, chiefly if not entirely because the courts have found nowhere precedents for them to forbid the strike; but it is well settled that rights recognized merely by the decisions of court, by the common law, are subject to regulation by statutes unless some constitutional provision prohibits.

When the Revolution was accomplished each separate state of the American union succeeded to the legislative power of the British Parliament; that is an unlimited and omnipotent power, unless and until the people of the several states by their constitutions limited the powers. It is, of course, elementary that the federal constitution is a grant the state constitution a restriction. We look to the federal constitution for the powers that are given and to the state constitution for the powers that are denied. We shall look in vain in any state constitution for a denial of the right of the legislature to limit "the God-given right to strike." The defendants, recognizing this, flee to the shelter of the Fourteenth Amendment, that refuge of all evaders of regulatory statutes of the states, generally without avail. They say that this law is not "due process of law;" that it denies them "the equal protection of the laws." It would be idle to discuss in the presence of this court, which so many times has defined "due process of law," to enter into any extended discussion. Permit me only to submit my understanding of what constitutes "due process of

law." That phrase is derived from "the law of the land" of Magna Charta of 1215; but "due process of law" means something other than the law of the land in 1215, because the law of the land then included compurgation, ordeal by battle and other barbarism. It means today something other than the law of the land when Winthrop and Coke wrote the petition of right in 1628, for then the Star Chamber was in full power and there was execution before trial or judgment. It means something other than the common law as it was imported into America in 1608; something other than the law of the land when the Glorious Revolution of 1688 was accomplished; and it must not be forgotten that Magna Charta and the Constitution of 1688 were restrictions purely upon the power of the monarch and not upon the power of Parliament. The restriction of legislative power by a paper constitution, unknown to this day in England, and the right of the judiciary to review legislative enactments as to their conformity to such constitution are America's contribution to civil government. As was pointed out in Hurtado v. California, and again in Twining v. New Jersey, the law is a living thing and "due process of law" is that process which is recognized as conformable to Anglo-Saxon precedents and modern needs. It is not a dead thing, a straight-jacket confining the energies of a great people. "Due process of law" is a living growth.

A justice of this court, noted for his researches outside his employment on the bench and his felicity of expression, has said:

"The law is always approaching and never reaching

consistency. It is forever adopting new principles from life at one end, and it always retains old ones from history at the other which have not been abolished or sloughed off. It will become entirely consistent only when it ceases to grow."

As I understand "due process of law," it is simply this: If the litigant has had his day in court and been confronted with the charge against him, either criminal or civil; has had process for his witnesses, in short, if there has been trial before judgment and judgment before execution he has had due process of law; and these defendants have had this in the fullest measure. The proceeding may be summary, as before a board of tax commissioners, a board of assessors in a drainage district, and many other instances that may occur to the court. It is not especially the form or the tribunal that matters; it is the essence of the fact that the defendant has had his day in court, a chance to be heard before judgment.

The other expression of that great ordinance, "the equal protection of the laws," does not mean that the law shall bear alike upon every individual. There is a power of reasonable classification and where there is classification when burdens or restrictions are imposed upon one class singled out and distinguished from the mass of the citizens, the burden is not upon the supporters of the law or regulation to show that the classification is reasonable. The burden is upon him who objects to the classification, and he must show that it is unreasonable; otherwise, it will stand. Is the classification here unreasonable? It is the only classification possible. It is inevitable. No other disputes between man and man that are not justiciable in the courts

of first instance continue to incite to deeds of violence and destruction of property. Therefore, the classification is here not only reasonable, but as I say, inevitable. It is unassailable. In the very late case of Truax v. Corrigan the classification, which selected the limited class, the employers of labor, and deprived them of the protection of the equity arm was held to be unreasonable. There is no analogy between that law and the Industrial Court Law.

The opponents of this law denounce it as a return to chattel slavery. They say it compels the laborer to accept a certain wage, whether satisfactory to him or not, and to continue to work for it. The point is worth examining. We have a law in Kansas, and it is the same in many other states, that forbids a railroad engineer under heavy penalty to leave his engine between division points. The continuity of traffic, the convenience of public travel and the necessities of distribution make this act highly essential and salutary, but it is chattel slavery. That engineer is chained to his throttle for the time being as the galley slave to his oar, but the State did not conscript Casey Jones and make of him first a wiper, then a fireman and then an engineer. The State does not compel him to remain in that employment. When he turns his engine over to the hostler at the division point, he is free to quit, but when he accepts the employment of engineer he is to an extent enlisted in a public service; he accepts this as part of the burden of his employment, as the coal miner accepts the fact that he must go underground to earn his daily wage. So when the Kansas law forbids those engaged in these essential industries from striking, from conspiring to

strike with the intent to cripple these industries, or whenever such conspiracies threaten the public peace or endanger the public health, this law interferes. This becomes then like the engineer's continuance at his throttle, part of the burden of his employment in these industries.

If we are correct in assuming that production is more essential than distribution, then the State has the same right to insist upon continuity of employment in production as it has to insist upon continuity of employment in distribution. Once this idea is grasped, it becomes clear that this law is sound.

We recognize that it is only through organization, through unions that labor has fought its way upward out of the long night of degradation and serfdom to its full stature in the light of day. If I thought there was one line or phrase in this law that forbade the organization of labor, or even impeded or hampered these beneficent instrumentalities I should denounce the law as bitterly as opposing counsel. So far from that being true, the law legitimates organization, recognizes and approves collective bargaining. What the law frowns upon is the power of an arrogant, and sometimes a corrupt and unscrupulous labor boss to throttle industry and threaten the peace and safety and health of great communities by his mere fiat. In Kansas we are tired of this *imperium in imperio*, the power that defies the state, defies the law, and which holds at its mercy the peace, comfort, health, in short the general welfare of all the people of that great state.

We in Kansas, like many other people, are prone to make broad our phylacteries to thank God we are not as other

men are. At the risk of appearing to do this, I must call attention to one known fact. Kansas City, Kansas, is one of the largest packing centers in the country. During the last packing-house strike, which failed because it was called at an inopportune time, there was violence, blood shed and destruction of property, in short civil war, in every other packing center of equal size except in Kansas City, Kansas. There the strike wore to a peaceful failure, without the destruction of a dollar's worth of property, because this court had warned both sides that if production so far diminished as to threaten the state with a shortage of meat, or if there was any picketing contrary to the state law, or any violence, the entire power of the State of Kansas would be thrown into the fight.

This law has passed the experimental stage. Laborers and labor organizations are constantly appealing to it for relief Several cases have been brought before the court by labor organizations. It is gradually dawning upon the laboring men that this law is intended to do justice, not to the employer alone, but equally to the employee. Governor Allen, the chief protagonist of this measure, who has been bitterly denounced by labor bosses, is gradually becoming recognized for what he is, the wisest and sanest protector of labor in the United States. Today the worst opponents of the law are The Employers Association (euphemistic for trust) and Alexander Howat. In all these labor controversies "Jones, he pays the freight." Ground between upper and nether millstones of capitalistic bosses and labor bosses, the great family of Jones, to which I belong, the general public, is beginning to real-

ize that a law that is obnoxious to these two heretofore oppugnant and discordant forces must be a good law for it. The fact that these two belligerents have called a temporary truce and joined hands to fight the law makes us believe in it. We are beginning to love the law for the enemies it has made.

I would not use vain repetitions as the heathen do, but at the risk of iteration I submit that this law should appeal peculiarly to the bench and bar because it aims at the adjustment of labor controversies by justice and not conquest; because its processes are juridical, its conclusions judicial.

Respectfully submitted,

F. DUMONT SMITH,
Of Counsel for Defendant in Error.

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No. [redacted]154

In the Supreme Court of the United States.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, and ROBERT B. FOSTER, *Plaintiffs in Error,*

vs.

THE STATE OF KANSAS, *Defendant in Error.*

BRIEF OF DEFENDANT.

RICHARD J. HOPKINS,
Attorney-general,
FRED S. JACKSON,
Solicitors for the Defendant in Error.

TOPEKA, KANSAS.

8-6450 (27,944)

MOTION.

Comes now the above-named defendant in error, the state of Kansas, and moves that the court dismiss the writ of error herein, for the reason that no Federal question is involved in this case, and that the case does not draw in question the validity of any authority exercised by the state under a state statute, nor the validity of any statute or treaty of the United States.

The defendant in error further moves that if the case be not dismissed on the face of the record, it be advanced for hearing in accordance with Rule No. 26 of the supreme court of the United States, as the case is in its nature a criminal suit.

RICHARD J. HOPKINS,
Attorney-general,

FRED S. JACKSON,

Solicitors for the Defendant in Error.

In the Supreme Court
of the United States.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, and ROBERT B. FOSTER, *Plaintiffs in Error*,

vs.

THE STATE OF KANSAS, *Defendant in Error*.

BRIEF.

The opinion of the supreme court of Kansas in this case, which forms the basis of the mandate or judgment from which the writ of error is prosecuted, appears in 107 Kan. 423, and in the printed record, pages 86-94. In no place does it appear that any Federal question was raised in the lower court, or that any controversy existed that involved the protective features of the constitution of the United States as applied to rights of the plaintiffs in error. It appears clearly, from the opinion of the court, that the case turned upon the authority of the legislature to provide for compelling the attendance and the giving of testimony of witnesses before a statutory board created for the purpose of making an investigation concerning conditions prevailing in the mining industry within the state, making findings and reports for the purpose of establishing rules to promote the health and safety of employees, and the continuity of production. These questions are all essentially local questions, and there is and was no attempt to show that any of the substantial constitutional rights of either of the plaintiffs in error were abridged or infringed by the order of the district court before which they were originally convicted of contempt. These questions are all essentially questions of local law, and there was really nothing involved in the case except the jurisdiction of the district court to enforce an order directing plaintiffs in error to appear and give their testimony before a legis-

lative board. The sufficiency of the application for this order, and the jurisdiction of the district court of Crawford county to issue the same, was not contested, but admitted in all of the proceedings by the plaintiffs in error. They chose to disobey this order of the court on the sole ground that the board, or court of industrial relations, before which they were ordered to testify, had no legal or moral right of existence. Under such circumstances, there was but one judgment which could be given by the district court wherein they were tried on the charge of contempt, and but one judgment which could be given by the supreme court on appeal from such order of the district court. The facts sufficiently appear from the opinion referred to above, and may be summarized as follows:

An act of the legislature was passed in the Special Session of 1920 of the state of Kansas, which became effective January 24, 1920 (chapter 29, Laws of 1920). This act, among others, made it the duty of the Court of Industrial Relations to exercise the powers mentioned above: *i. e.*, to investigate conditions existing in the mining industry, make findings and reports, and establish rules with reference to the operation thereof, designed among other purposes to promote the health and safety of employees, and the continuity of production. This industrial court or board, about the first of April, 1920, entered upon an investigation of such conditions on the complaint of certain miners who were members of a labor union of which the defendants were officers. In the conduct of such investigation, in the opinion of the judges of said board or court, it became necessary to take the testimony of plaintiffs in error. A subpœna was duly issued for them, which they refused to obey. Then under section 11 of said chapter 29, Laws of 1920, the court of industrial relations applied to the district court for an order to enforce this subpœna requiring the plaintiffs in error to appear and give their testimony. So much of that section of the law as is material to the present controversy reads as follows:

"In case any person shall fail or refuse to obey any summons or subpœna issued by the said court (industrial court) after due service, then and in that event said court is hereby authorized and empowered to take proper proceedings in any court of competent jurisdiction to compel obedience to such summons or subpœna."

An application which was held sufficient by the district court wherein the same was filed was made by the court of industrial relations through its proper officers on April 8, 1920, and in response to this charge the defendants filed an answer consisting of twenty-three paragraphs.

"The first twenty-one alleged that the act undertaking to create the court of industrial relations was void because in conflict with various provisions of the state and Federal constitutions, and that therefore that body had no legal existence, and the district court was without jurisdiction to enforce attendance upon it. The twenty-second paragraph denied the violation of any lawful order of the district court, and the twenty-third was a general denial."

On April 9, 1920, on the issues raised by this answer, the plaintiffs in error were convicted of contempt of the district court of Crawford county, Kansas, and sentenced to be confined in jail until they should submit themselves to be sworn and testify in said court as to the matters under investigation by it. An appeal was taken to the supreme court of Kansas, and while the appeal was pending, on June 26, the defendant filed a motion in that court, which was granted, for leave to withdraw all grounds of defense based upon the alleged violation of any constitutional rights. On July 2, the day the appeal was heard, the plaintiffs in error asked that the order of withdrawal be vacated, and that they be permitted to renew the motion in order that their contentions as to the invalidity of the industrial court act might be considered. It thus appears that the decisive question in the case was the jurisdiction of the district court to compel the attendance of a witness before any other tribunal than itself. It appears from the opinion of the supreme court, page 429, that this question was decided wholly upon the words of the statute itself, which have already been quoted, and that this statute was the basis of the opinion both in the district and supreme court. The supreme court, in its opinion, stated:

"The constitutionality of the provision quoted has not been challenged except by an objection relating to the title, citing *I. C. C. v. Brimson*, 154 U. S. 447, 155 U. S. 1."

Again, record page 98, the court said:

"1. Most of the constitutional objections raised by the defendants are directed to provisions of the act creating the court of industrial relations the validity or invalidity of which can

in our judgment have no possible bearing upon the disposition of the present case. The statute makes the new body the successor of the public utilities commission, the functions of which are devolved upon it. (Laws 1920, ch. 29, sec. 2.) It therefore has a legal existence unless that commission was a nullity, which is not suggested. The legislature has undertaken to grant to it, among other additional powers, those of investigating certain controversies relating to the operation of various industries, including coal mining, and of taking evidence and making findings thereon. (Sec. 7.) Its proceedings are required to be reported to the governor. (Sec. 27.) It is clear that it would be competent for the legislature to authorize an administrative tribunal to make such investigations, findings, and reports even if no further purpose were to be accomplished than to give publicity to existing conditions and provide data upon which subsequent legislation might be based. The act also undertakes to empower the court to make orders with reference to the conduct of the industry—among other things to regulate wages. (Sec. 8.) Whether or not the legislature could confer all the powers so attempted to be given—for instance that to which specific reference has just been made—we have no doubt whatever that it could invest the industrial court with some of them. The legislature may of course enact statutes designed (for example) to protect the health and safety of miners, and may authorize an administrative body to make rules in that connection having the force of laws. (*Richards v. Coal Co.*, 104 Kan. 330, 179 Pac. 380; 12 C. J. 847-853.) Regulations of that kind would be within the scope of the act under consideration. Inasmuch as the police power extends to the protection of the welfare and convenience as well as the health, safety and morals of the public, it may manifestly be invoked—as in the present instance—to prevent interruption in the production of a commodity so vitally necessary to the people of this state as coal, so long as the means employed are not for some special reason obnoxious to constitutional provisions. There is abundant field for the operation of the act under consideration even if every portion of it to which a specific objection has been urged were entirely eliminated.

"2. It is quite clear that the part of the act relating to the conduct of an investigation could be upheld although some of the attempted grants of power should be held void, even if the statute contained no reference to the effect of partial invalidity. However, one section of it reads as follows:

> "'If any section or provision of this act shall be found invalid by any court, it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section or provision, and the act as a whole shall not be declared invalid by reason of the

fact that one or more sections or provisions may be found to be invalid by any court.' (Laws 1920, ch. 29, sec. 28.)

"The rule is familiar that a part of the statute which is unobjectionable in itself may be enforced notwithstanding another part is adjudged unconstitutional, if it appears that the void portion was not an inducement to the enactment of the rest—that the legislature desired the unobjectionable part to become a law irrespective of the validity of the remainder. Here the express declaration disposes of any possible doubt that might otherwise exist as to the legislative intent, and requires the court to give effect to all portions of the statute that do not in themselves violate some constitutional provision. (*State v. Wilson*, 101 Kan. 789, 806, 168 Pac. 679.)"

It is clear from the foregoing that the only questions passed upon by the court affecting the constitutionality of the court of industrial relations law were those of a local nature involving, first, the right of the governor to call a special session of the legislature; second, that executive, legislative, and judicial functions were commingled within the powers of a legislative board (syl. 8). None of these provisions have any relation to rights granted by the Federal constitution, and the decision of the supreme court of the state is final upon all of them.

PROCEEDINGS NOT APPEALABLE.

Speaking of the original proceedings had in the district court to enforce the attendance of the defendants as witnesses before the court of industrial relations, the supreme court said, record 91, paragraph 5:

"The occasion for the aid of the district court being invoked to require the attendance of witnesses before the court of industrial relations arises from the well understood fact that the latter body in spite of its name is an administrative and not strictly a judicial tribunal and is therefore regarded as incapable of enforcing its own process. (*In re Sims, Petitioner*, 54, Kan. 1, 37 Pac. 135; *In re Huron*, 58 Kan. 152, 48 Pac. 574.) The defendants argue that the district court under the statute is without authority to compel the attendance of a witness before any other tribunal than itself. The industrial court act however contains this provision:

"'In case any person shall fail or refuse to obey any summons or subpœna issued by said court (of industrial relations) after due service then and in that event said court is hereby authorized and empowered to take proper proceedings in any court of competent jurisdiction to compel obedience to such summons or subpœna.' (Laws 1920, ch. 29, sec. 11.)

"We interpret this language as authorizing the procedure here followed—the issuance and service of an order by the district court requiring the defendants to appear before the court of industrial relations, and their commitment for contempt for refusing to obey that order. The district court being one of general jurisdiction is obviously a proper tribunal to which to apply for the needed aid and the method pursued is one naturally adapted to the end sought. The constitutionality of the provision quoted has not been challenged except by an objection relating to the title, which will be mentioned later. A similar feature of the Federal law relating to the attendance of witnesses before the interstate commerce commission has been upheld against the contention that the action of a court in requiring a witness to appear before an administrative body was nonjudicial. (*Interstate Commerce Commission v. Brimson*, 154 U. S. 447, 155 U. S. 1.) The arguments upon both sides of that question are so fully set out in the opinions cited that further discussion is regarded as unnecessary. We hold the provision to be valid."

Obviously, the proceeding is one in the nature of a discovery in equity, brought in the state court of general jurisdiction. (18 Corpus Juris., secs. 7, 9, 13. *Att'y-gen. v. Newcastle*, upon Tyne [1897] 2 Q. B. 384.) No exception was taken to the proceeding, and no objection tendered as to the sufficiency of the application or the notice given, and no appeal taken from the final judgment of the district court ordering the defendants to appear as witnesses in the industrial court. In other words, no objection of any kind was made until after the defendants were attached as for a contempt in not submitting to the order or judgment of the district court requiring their attendance as witnesses before the industrial court. This brings the defendants squarely within the rule announced by this court in many decisions to the effect that "if the proceeding which was for contempt was independent of and separate from the original suit, it cannot be reëxamined by either writ of error or appeal." (Zoline's Fed. Appellate Jurisdiction and Procedure, sec. 11, citing *Hays v. Fischer*, 102 U. S. 121.) Moreover, the proceeding sought to be appealed from is not in any sense a criminal procedure; for, as is well said in the opinion of the supreme court, the defendants could at any moment have obtained their liberty by signifying their willingness to comply with the order of the district court. This court said, in *Newport Light Co. v. City of Newport*, 151 U. S. 527:

"The decision of the highest court of the state ordering a lower state court to discharge a rule for contempt is not a final judgment, nor does it present a Federal question such as would entitle the party to have the judgment reëxamined in this court."

Quoting from *McMicken v. Perin*, 61 U. S. 20 How. 135, the court said:

"The plaintiff in error was attached for contempt in refusing to make a conveyance after a tender and deposit of money in court had been made in compliance with a mandate of this court. He appealed to this court, and it was held that the proceedings in contempt involved no new question or decision, but were the ordinary means of enforcing the original decree, and in no sense was it a final decree upon which an appeal could be sustained. It was, in effect, the same as ordering an execution on a judgment of law which had been affirmed on error and remanded for execution to the circuit court."

Hammond Lumber Co. v. Sailors Union, 167 Fed. 816.
Heinz v. Butte, 63 C. C. A. 338 (129 Fed. 279).

In addition to the proposition stated above, this court must determine for itself whether the proceeding involves a substantial Federal question; and, as heretofore stated, there is nothing in this proceeding that indicates that the defendants were deprived of any Federal right, or that they in good faith claimed that they were deprived of any right or privilege guaranteed under the Federal constitution. *Newport Light Co. v. City of Newport*, supra.

We respectfully submit, therefore, that the appeal should be dismissed.

RICHARD J. HOPKINS,
Attorney-general,

FRED S. JACKSON,

Solicitors for the Defendant in Error.

TOPEKA, KANSAS.

Office Supreme Court,
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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. [redacted]154

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, AND ROBERT B. FOSTER, PLAINTIFFS IN ERROR,

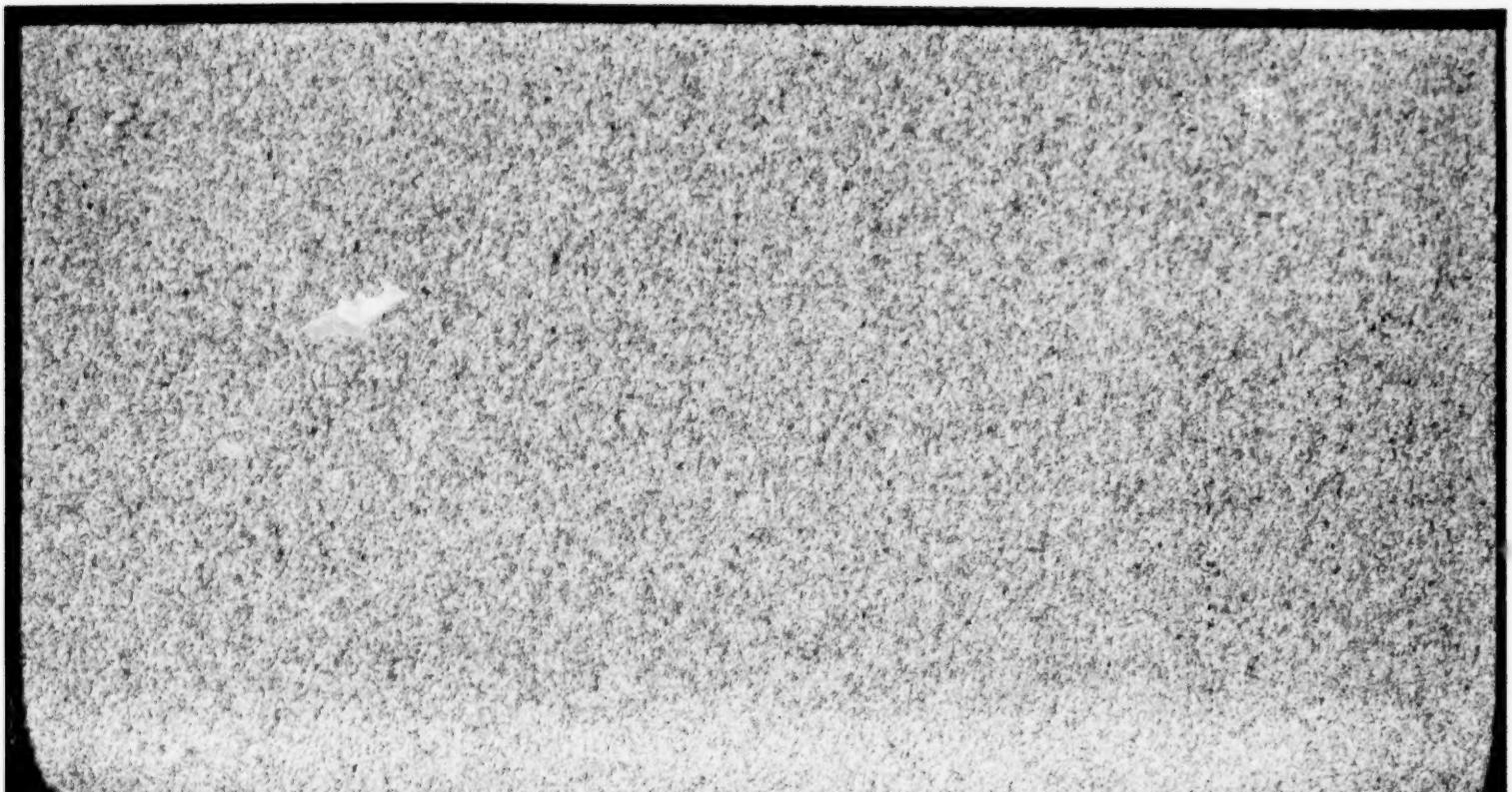
vs.

THE STATE OF KANSAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

PLAINTIFFS IN ERROR'S ANSWER TO DEFENDANT IN ERROR'S MOTIONS.

REDMOND S. BRENNAN,
JOHN F. McCARRON,
Attorneys for Plaintiffs in Error.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 587.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, AND ROBERT B. FOSTER, PLAINTIFFS IN ERROR,

vs.

THE STATE OF KANSAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

PLAINTIFFS IN ERROR'S ANSWER TO DEFENDANT IN ERROR'S MOTIONS.

Now come the plaintiffs in error, Alexander Howat, August Dorchy, Thomas Harvey, and Robert B. Foster and move the court to dismiss the motions of the defendants in error for the following reasons:

1. That plaintiffs have questioned the validity of the act creating the Court of Industrial Relations of Kansas and contend that said act is violative of their rights as citizens of

the United States in that said act violates certain specifi provisions of the Constitution and laws of the United State hereinafter set forth and that the same have been properly raised by them in the District Court of Crawford County Kansas, and the Supreme Court of Kansas and are now before this honorable court for its determination. That the plaintiffs are entitled to present a full and complete argument on the merits of the respective Federal jurisdictional questions as affecting the constitutional rights of said plaintiffs and that therefore the motion to dismiss should be overruled.

2. It will be observed that the defendant in error in the second part of its motion states:

> "The defendant in error further moves that if the case be not dismissed on the face of the record, it be advanced for hearing in accordance with Rule No. 26 of the Supreme Court of the United States, as the case is in its nature a criminal suit."

The court will also observe that on page 6 of defendant in error's brief is the following:

> "Moreover, the proceeding sought to be appealed from is not in any sense a criminal procedure; for, as is well said in the opinion of the Supreme Court, the defendants could at any moment have obtained their liberty by signifying their willingness to comply with the order of the district court."

Defendant in error by the aforesaid statement denies the very contention made in its motion that this case is in its nature a criminal suit. The plaintiffs therefore upon the admission of the defendant in error respectfully request that the motion be denied under Rule 26 of this court.

BRIEF.

1. Plaintiffs as shown by the Record, pages 65 and 66, on April 8, 1920, in their answer to the application of the defendant in error in the District Court of Crawford County on April 6, 1920, in which said plaintiffs were charged with contempt for their refusal to obey the order of said District Court of Crawford County to appear and testify in a certain proceeding in the Court of Industrial Relations in response to a subpoena of said Court of Industrial Relations, set forth in said answer 23 specifications that the act of the Legislature of Kansas creating said Court of Industrial Relations is void as being in direct conflict with the Constitution of the United States and the State of Kansas. It is averred in plaintiffs said answer hereinbefore mentioned that the act creating said Court of Industrial Relations is violative of the Constitution of the United States and said specifications as to said violations are more particularly described in paragraphs 12, 13, 14, 15, 16, 17, and 18 of plaintiff's said answer. They are as follows:

> "12. That the act of the special session of the Legislature of the State of Kansas of 1920, in enacting what is known as Substitute for Senate Bill No. 1, 'An act creating the Court of Industrial Relations, defining its powers and duties, and relating thereto, repealing all acts and parts of acts in conflict therewith, and providing penalties for the violation of this act,' was and is now unconstitutional and void for the reason that said legislative enactment, known as Substitute for said Senate Bill No. 1, violates section 4 of article 4 of the Constitution of the United States;

"13. For the further reason that the said legislative enactment violates article 1 of the Amendments to the Constitution of the United States known as the First Amendment;

"14. For the further reason that said legislative enactment violates article 5 of the Amendments to the Constitution of the United States, known as the Fifth Amendment;

"15. For the further reason that the said legislative enactment violates section 1 of article 13 of the Amendments to Constitution of the United States, known as the Thirteenth Amendment;

"16. For the further reason that said legislative enactment violates section 1 of article 15 of the Amendments to the Constitution of the United States, known as the Fifteenth Amendment;

"17. Said defendants and each of them, therefore, deny that the said 'Court of Industrial Relations of the State of Kansas' has now or has had at any time heretofore any jurisdiction or authority to inquire into the relationship of employment now or heretofore existing by and between the members of District No. 14, of the United Mine Workers of America, within the State of Kansas, and the Southwestern Coal Operators' Association within the State of Kansas, or any relationship of employment now or heretofore existing by and between any of the said membership of District No. 14 of the United Mine Workers of America and any independent coal operator within the State of Kansas, or to inquire into the relationship of employment existing by and between the employers and employees in any of the industries specified in said act.

"18. Said defendants and each of them deny that said 'The Court of Industrial Relations of the State of Kansas' has now or has had at any time heretofore any jurisdiction or authority, either in law or in fact,

to subpœna witnesses to give testimony before said 'The Court of Industrial Relations of the State of Kansas' or to, by any legal process, cause said defendants or any of them to appear before said 'The Court of Industrial Relations of the State of Kansas' for any purpose whatsoever; and said defendants aver that any color of authority or jurisdiction presumed to be exercised by said 'Court of Industrial Relations of the State of Kansas' to conduct such industrial inquiries or to subpœna any person or persons to appear before the said body or to invoke any legal process to compel the attendance of witnesses before said body; that any such authority or jurisdiction so sought to be exercised by said body is a mere usurpation."

Upon appeal to the Supreme Court of Kansas from the adverse decision of the District Court of Crawford County and the cause having been heard by said supreme court that court in an opinion (Record, pages 93 and 94) dwelt on the Federal jurisdictional questions involved in this cause as follows:

"Finally it is contended that the act is void as an attempt to interfere in matters of purely Federal jurisdiction—that the national government has so fully occupied the ground attempted to be covered by the industrial court law that there is no field left in which the latter may operate. The agencies which the defendants regard as bringing about this result are:

"The entrance into an interstate contract between the international officers of the United Mine Workers of America and the representatives of the Coal Operators Association of the United States at the

conclusion of the coal strike a little over six months ago;

"The appointment by the president of a commission to hear and determine matters of hours, wages and conditions in the mining industry in the United States;

"The Clayton act (38 U. S. St. at L., 730), relating to unlawful restraints and monopolies in interstate commerce, particularly the portion thereof (sec. 20) which forbids Federal courts to grant injunctions against certain conduct of employees, of which ceasing to perform work is an illustration, and which declares that such conduct shall not be held to be violative of any law of the United States;

"The Lever act (40 U. S. St. at L., 276) providing for governmental control of the production and distribution of food and fuel until the termination of the war.

"It is quite possible that the scope of the authority of the Court of Industrial Relations may be limited in some respects by these agencies—that a particular order made by that body might be found to be ineffective, for instance, because in conflict with some lawful order of a Federal officer or body, or because constituting an undue interference with interstate commerce."

It will be observed that the Supreme Court of Kansas has stated in said opinion:

> "It is quite possible that the scope of the authority of the Court of Industrial Relations may be limited in some respects by these agencies."

meaning Federal agencies. The court will respectfully note that the aforesaid court therein expresses its belief that the

scope of the authority of the said Court of Industrial Relations "may be limited" and therefore plaintiffs are entitled to the decision of this court in defining the scope of the authority of the said Court of Industrial Relations in its relation to the Federal agencies heretofore mentioned; and, further, that said decision is vital to the rights of plaintiffs as it is not within the authority of said Supreme Court of Kansas to make final decision affecting the aforesaid Federal jurisdictional questions as that is for this honorable court to determine. The contention of the defendant in error in its brief (page 1)

> "These questions are all essentially local questions, and there is and was no attempt to show that any of the substantial constitutional rights of either of the plaintiffs in error were abridged or infringed by the order of the district court before which they were originally convicted of contempt."

is squarely met and answered by the admission of the Supreme Court of Kansas in that part of its opinion as heretofore set forth.

The question as to whether the District Court of Crawford County, Kansas, has authority to issue a subpoena for a witness to testify in the said Court of Industrial Relations, involving, as it does, the Federal constitutional rights of plaintiffs, is one that is for the determination of this court and can only be passed upon by a full and complete presentation of the merits in this cause.

That it is a violation of one's rights of free speech and of his liberty under the United States Constitution that he be required to appear before any person, or body of persons, having no official existence is readily deducible from the decisions

of the courts of Kansas, as well as of the Supreme Court of the United States. That plaintiffs had been ordered and were about to be compelled to appear before such a body and to testify constitutes the "threatened invasion" of their constitutional rights.

The State *ex rel.* against Howat, as this case is known in the Kansas Reports, is found in Vol. 107, at page 423. The syllabus is by the court. In paragraph 1 thereof the court says:

> "The legislature may create an administrative body and empower it to investigate conditions existing in the mining industry, make findings and reports and establish rules with reference to the operation thereof * * * so long as the regulations are reasonable."

We construe this to mean that some method must be provided from the start to properly provide that the regulations will be subject to scrutiny as to their reasonableness. We contended in the Supreme Court of Kansas and again in our petition for writ of error in the Supreme Court of the United States that the legislature, in creating the Court of Industrial Relations has not done this. It has provided no valid means by which a regulation of the industrial court might be inquired into. While it has attempted to supply this essential element by providing for review by the supreme court of the State, that section of the act relating to the supreme court must be considered as absolutely void for two reasons: First, because an act of the Legislature seeks to enlarge the original jurisdiction of the supreme court. By the Constitution of the State of Kansas the supreme court is limited in its original jurisdiction to mandamus, *quo war-*

ranto, and ***habeas corpus***. The proceeding described in the Court of Industrial Relations Act respecting the supreme court is manifestly none of these three. The proceeding described, however, is original; second, should such review by the supreme court be deemed within its appellate jurisdiction and therefore subject to enlargement by the Legislature, the provision would commingle in the supreme court the functions of the legislative and judicial branches of government, for it would call upon the supreme court to take cognizance of a subject of legislative investigation and to make regulations and rates. The section, therefore, relating to the supreme court is utterly void, and that being the case we are confronted with a creature of the Legislature which does not comply with the limit necessary for validity as expressed in the syllabus above set out, in that there is *ab initio* an utter failure to supply the essential element therein described. The Supreme Court of the United States should properly pass upon this proposition as it has not been passed upon by the supreme court of the State.

The subpœna issued by the Court of Industrial Relations in the said case before you is a violation of article 4 of the Amendments to the United States Constitution, which amendment provides for the safe guarding against unreasonable search and seizures, and in this case the rights of Howat, Dorchy, Harvey, and Foster, plaintiffs in error, to be secure in their persons, papers, and effects against unreasonable search and seizures because the act creating the Court of Industrial Relations is a branch of the Legislature and not a judicial body, and the subpœna read in connection with the organic act creating the said Court of Industrial Relations shows an attempt to secure testimony or papers in a manner

that is prohibited by said article 4 of the Amendments to the Constitution of the United States. The Court of Industrial Relations, if at all legal, exists only as a legislative body and does not have the attributes or powers of a court of general or original jurisdiction.

With regard to section 1 of article 4 of the Constitution of the United States, the said Court of Industrial Relations law is invalid for the reason that it calls the body a "court" when it is not a court and for the further and stronger reason that it seeks to confer upon said court both legislative and judicial functions, thereby commingling departments which, under republican form of government, must be kept separate and distinct.

The defendant in error in its brief is undecided as to just what the functions of the said Court of Industrial Relations are for it refers first to it as an administrative board and then as a court. It must be either one of two. It cannot be at one and the same time an administrative board and a court. Plaintiffs must know definitely as to whether it is a court or an administrative board so as to be able to safeguard their Federal constitutional rights and privileges, and therefore they are entitled to the decision of this court as to whether the Court of Industrial Relations is a legal entity properly functioning as a court under the Constitutions of the State of Kansas and the United States.

The attempt by defendant in error to show that the proceedings are not appealable is without a sound premise. It is shown by the excerpt of the decision of the Supreme Court of Kansas (page 5) of defendant in error's brief that in the section of the Court of Industrial Relations Act therein

set forth that the act refers to it as a court, whereas the Supreme Court of Kansas states it

> "is an administrative and not strictly a judicial tribunal."

Plaintiffs contend that it is not within the purview of said Supreme Court of Kansas to read into the act creating the Court of Industrial Relations, as it has done, that said court is an administrative tribunal, as same is not set forth in said act creating the said Court of Industrial Relations.

It is respectfully submitted that the motions of the defendant in error be overruled.

Respectfully submitted.

REDMOND S. BRENNAN,
JOHN F. McCARRON,
Attorneys for Plaintiffs in Error.

No. 154.
(October term, 1921.)

In the Supreme Court of the United States

ALEXANDER HOWAT *et al., Plaintiffs in Error,*

vs.

THE STATE OF KANSAS, *Defendant in Error.*

NOTICE OF MOTION TO DISMISS.
AFFIDAVIT OF SERVICE.

RICHARD J. HOPKINS,
Attorney-general for the State of Kansas.
MOORFIELD STOREY,
BAXTER D. McCLAIN,
Solicitors for the Defendant in Error.

TOPEKA, KAN.

9-1791

In the Supreme Court
of the United States

LEXANDER HOWAT *et al., Plaintiffs in Error,*

vs.

HE STATE OF KANSAS, *Defendant in Error.*

No. 154 (October term, 1921).

In Error to the Supreme Court of the State of Kansas.

NOTICE OF HEARING OF MOTION TO DISMISS.

o: Alexander Howat and August Dorchy, plaintiffs in error, and Redmond S. Brennan and Phil Callery, solicitors for the plaintiffs in error:

You are hereby notified that the defendant in error, the state of ansas, has filed its motion to dismiss the writ of error herein for ant of jurisdiction, a copy of which motion is hereto attached and ade a part of this notice, and that the defendant in error will subit said motion to the supreme court of the United States at the ne that said cause is assigned for hearing upon the docket of said urt.

RICHARD J. HOPKINS,
Attorney-general for the State of Kansas.

MOORFIELD STOREY,
BAXTER D. McCLAIN,
Solicitors for the Defendant in Error.

Due and regular service of the above and foregoing notice, with copy of motion attached, is hereby acknowledged to have been made upon the undersigned, solicitor for the plaintiffs in error, this ——— day of December, 1921.

Solicitor for the Plaintiffs in Error.

(FACE SIDE)

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

145622

Registered Article
No. 24576

Return to COURT OF IND
(Name of Sender)

Street and Number
or Post Office Box RELATIONS

TOPEKA,
KANSAS.

(REVERSE SIDE)

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

(Signed) REDMOND S. BRENNAN
(Signature or name of addressee)

(Signature of addressee's agent.)

Date of delivery DEC. 3, 1921

AFFIDAVIT OF SERVICE.

STATE OF KANSAS, SHAWNEE COUNTY, ss.

Baxter D. McClain, being first duly sworn, on his oath states:

That he is one of the solicitors for the defendant in error in the above-entitled action; that on the 2d day of December, 1921, he made service of the above and foregoing notice of motion to dismiss by depositing in the United States mail at Topeka, Kansas, a full, true and correct copy of the above notice, with copy of said motion therein described attached thereto (brief of the defendant in error upon said motion having been heretofore served), with postage prepaid, addressed to Redmond S. Brennan, solicitor for the plaintiffs in error, at his post-office address, 1218 Commerce Building, Kansas City, Missouri, such notice being sent by registered mail and a receipt therefor requested and obtained, which receipt is attached hereto; and that acknowledgment of service of said notice in writing, requested by mail, telegraph and by telephone, has not been obtained.

BAXTER D. McCLAIN.

Subscribed and sworn to before me this 12th day of December, 1921.

WILL F. WILKERSON, *Notary Public.*

My commission expires April 17, 1923.

(Seal.)

Office Sup
FEB
WM. R.

No. 154 (27,944), No. 491 (28,446).

In the Supreme Court of the United States.

OCTOBER TERM, 1921.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, and ROBERT B. FOSTER, *Plaintiffs in Error,*

vs.

THE STATE OF KANSAS, *Defendant in Error.*

No. 154 (27,944).

ALEXANDER HOWAT, AUGUST DORCHY, JAMES McILWRATH, JOHN FLEMING, WILLARD TITUS, and HEARL MAXWELL, *Plaintiffs in Error,*

vs.

THE STATE OF KANSAS, *Defendant in Error.*

No. 491 (28,446).

In Error to the Supreme Court of the State of Kansas.

BRIEF FOR THE STATE OF KANSAS.

RICHARD J. HOPKINS,
Attorney-general of the State of Kansas,
JOHN G. EGAN,
Asst. Attorney-general of the State of Kansas,
BAXTER D. McCLAIN,
MOORFIELD STOREY,
HAROLD S. DAVIS,
Attorneys for the State of Kansas.

9-2441

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In the Supreme Court
of the United States.

OCTOBER TERM, 1921.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, and ROBERT B. FOSTER, *Plaintiffs in Error*,

vs.

THE STATE OF KANSAS, *Defendant in Error*.

No. 154 (27,944).

ALEXANDER HOWAT, AUGUST DORCHY, JAMES McILWRATH, JOHN FLEMING, WILLARD TITUS, and HEARL MAXWELL, *Plaintiffs in Error*,

vs.

THE STATE OF KANSAS, *Defendant in Error*.

No. 491 (28,446).

BRIEF FOR THE STATE OF KANSAS.

Case No. 154 arises from a judgment by the district court of Crawford county, Kansas, punishing the plaintiffs in error for contempt in refusing to obey an order of that court to appear as witnesses and testify before the Court of Industrial Relations of the state of Kansas.

Case No. 491 arises from a judgment of the same district court punishing the plaintiffs in error for contempt in calling a strike at two mines of The George K. Mackie Fuel Company, in violation of an injunction which had been entered by that court.

Much of the argument in this brief is applicable to the contentions raised in each case. The statements of the facts are given separately, and most of the argument set out as a unit. The tenor of the argument will show to which case reference is made.

No. 491.

STATEMENT OF THE CASE.

This case can be stated very briefly.

The record shows that on September 14, 1920, the district court of Crawford county, Kansas, a court of general jurisdiction, in a suit brought by the state of Kansas at the relation of the attorney-general of Kansas and the county attorney of Crawford county, issued a permanent injunction against the plaintiffs in error and others (rec. 10) restraining them, among other things, "from directing, ordering or in any manner bringing about the hindering, delaying, interference with or suspension of the operation of any coal mines in the counties of Crawford, Cherokee or Osage in the state of Kansas, and of the mining of coal at any of said mines, and from causing the miners or members of said labor union to quit their work at said mines for the purpose or purposes of hindering, delaying, interfering with or suspending the operation of any coal mines in said counties; and from intimidating by threats, abuse or in any other manner any person or persons with intent to induce such person or persons to quit their work at said mines, or for the purpose of inducing, deterring, preventing, impelling or intimidating any other person or persons from accepting employment or remaining in employment at said mines; and from in any way whatsoever carrying out any conspiracy for the execution of any of said purposes." (Rec. 10, 11.)

The pleadings and evidence on which this injunction was granted are not found in the record, and there is nothing to show that any appeal was taken from the decree (see certificate with list of papers, rec. 2, 3).

Some months later, on February 7, 1921, an affidavit was filed by the attorney-general and county attorney in the foregoing case charging the plaintiffs in error and some others with contempt of court in violating the injunction of September 14, 1920. (Rec. 3.) On that day, after an *ex parte* hearing, the court "ordered that attachment be issued for the arrest of said defendants, requiring that they be brought into court to make answer of the charges made against them by said affidavit"; "that the plaintiff file formal written accusation against the defendants" (the plaintiffs in error); "and that said defendants file their answer to said accusation in writing." (Rec. 4.) This accusation, which is in form an affidavit, was filed and is found in the record. It charges the plaintiffs in

error with violating the injunction of September 14, 1920, by conspiring to cause and causing a strike in certain coal mines in the counties of Cherokee and Crawford. (Rec. 13-16.)

The court, after hearing, found that the allegations of the accusation were true, and that the plaintiffs in error were guilty of contempt, and sentenced them to imprisonment. They appealed from this sentence to the supreme court of Kansas, which affirmed the order of the court below (rec. 135), and this court is asked to review that court's decision on writ of error.

It will be observed that the Court of Industrial Relations is in no way connected with the case. No order or finding made by it is involved, and the court is not a party to the proceedings.

The reason why the strike was ordered is thus stated in the record. George Jenkins, the foreman of one mine, testified that George Young and John McNalley, president and secretary of Local 298, notified him "that there would be a strike at that mine till the case of Carl Mishmash was settled." (Rec. 32, 33.) Mishmash had a claim for an advance in his day's wage from $3.65 to $5 when he reached the age of 19. He demanded it of the witness on March 22, 1918, and he was paid it from April 1, 1918, as long as he stayed there. (Rec. 36, 37.) This payment was made in accordance with a contract made by the company which employed the men. (Rec. 36.)

The written order to strike signed by the plaintiffs in error Howat and Dorchy, as president and vice president of the labor union to which the miners belonged, notified them to cease work "until such time as the company pays brother Karl Mishmash the amount of money due him in accordance with the settlement made by the joint board of miners and operators in this case. (Rec. 49.)

The strike began the morning of February 4, 1921 (tr. 28, 29, 33, 43), applied to two mines called H and J (tr. 32-42), and it was called at both mines to begin on February 4, but mine J was not working on that day (tr. 42). Notice was given on behalf of the strikers on February 4 to the mine foreman at each mine that they would return on February 9 to clean up and get out the coal they had already mined (tr. 33). They returned on the 9th, cleaned up and took their tools out (tr. 29, 33, 34, 43, 60, 61). One witness stated the clean-up was on the 10th, evidently referring to Mine H (tr. 62, 63), but whether on the 9th or 10th is not material. The clean-up was by order of James McIlwrath, a member of the district board and one of the plaintiffs in error, and of Alexander

Howat (tr. 60, 61, 62). The purpose of the clean-up was evidently that the men could get paid for the last coal they had mined (tr. 38). Though it does not appear in the record, the men returned to work in the latter part of February. This was after the trial, judgment and sentence for contempt, which ended on February 16 (tr. 88).

The plaintiff in error Dorchy pleaded guilty of contempt. (Record, p. 55.)

How slight the pretext for the strike was appears by the testimony of Howat (rec. 112, 113, 114). This shows that Mishmash was born on August 31, 1898, according to the sworn testimony of his mother and two other parties, so that he became nineteen years old on August 31, 1917. The record produced by the witness showed that Mishmash's claim for advanced wages on that account was settled between the representatives of the miners and the owners on May 7, or 8, 1917, or nearly four months before he was entitled to make it (rec. 113, 114, 121, 122), and nearly a year before March 22, 1918, when he did make it. The company paid after April 1, 1918, and apparently nothing more was done about it till this strike was called. It seems that the company disputed the date of Mishmash's birth, and that in the family Bible it was entered August 31, 1899 (rec. 117). The amount involved was $225 (rec. 117, 121, 154).

In a word, this strike was called to force the payment of a claim for $225, which was disputed.

The court will find on pages 83, 84 and 85 of the record a series of propositions entitled "Finding of Fact and Conclusions of Law." These are findings and rulings requested by the counsel for the plaintiffs in error, as is apparent from their form, which is in most cases interrogative, and from the refusal of the court to adopt them (rec. 82).

The court's findings and orders are printed on pages 88, 89 and 90 of the record.

In brief, the court found that the allegations in the accusation were true and that the plaintiffs in error were guilty of contempt. They were therefore sentenced to imprisonment.

Reduced to its lowest terms, the case presents the question whether a sentence to imprisonment for contempt in violating an injunction against striking or calling a strike in coal mines will be reviewed by this court.

No. 154.

STATEMENT OF THE CASE.

Case No. 154 arises out of the punishment of Alexander Howat, August Dorchy, Thomas Harvey and Robert B. Foster by the district court of Crawford county, Kansas, for contempt in refusing to obey the order of that court to appear as witnesses and testify before the Court of Industrial Relations. A complaint having been made before the Court of Industrial Relations in the matters hereafter referred to, and the court deeming it proper to do so, it conducted an investigation in Cherokee and Crawford counties, Kansas, of the working conditions in the coal mines in those counties, and other incidental matters. (Tr. 53-56.) On March 27, 1920, it issued subpœnas to the persons named, ordering them to appear and testify before it at the district court room in the city of Pittsburg, in Crawford county, on April 6, 1920. These subpœnas were served on March 30. (Tr. 53, 54.) On April 6, 1920, these persons were in another room in the courthouse, where the investigation was being held, and their attention was called by the deputy sheriff to the fact that the Court of Industrial Relations desired their presence. They refused to appear before it. (Tr. 57-70.)

Thereupon, on the same date, an application on behalf of the state and the Court of Industrial Relations was made to the district court of that county, asking for the issuance and service of an order against the persons named, requiring them to appear and testify before the Court of Industrial Relations. (Tr. 53, 54.) On hearing the application the district court made the order. (Tr. 59, "exhibit 1.") This order was served upon Howat, Dorchy, Harvey and Foster and they refused to obey it. (Tr. 67-72.)

Thereupon the facts were presented to the district court and an accusation was filed with that court, charging Howat, Dorchy, Harvey and Foster with contempt, and praying that they be punished therefor. (Tr. 58.) Proceedings were had on this accusation, which resulted in the district court of Crawford county finding and adjudging that Howat, Dorchy, Harvey and Foster were guilty of contempt in the premises and sentencing each of them to imprisonment in the county jail of Crawford county until they should comply with the order to appear as witnesses and testify before the Court of Industrial Relations. This judgment and sentence were rendered on April 9, 1920, and the defendants were accordingly committed to jail. (Tr. 58, 60, 61, 62, 64.)

A showing having been made of reason to apprehend a jail delivery of these persons by a mob, they were removed to jails in other counties. (Tr. 29, 30, 31.) An appeal was taken by the defendants to the supreme court of the state, where the case was submitted on brief and arguments July 6, 1920 (tr. 84, 85), and on July 19, 1920, that court rendered its judgment, affirming that of the district court (tr. 85). The written opinion of the supreme court appears in the transcript at pages 86-94. A petition for rehearing having been denied (tr. 95-115), a writ of error was issued from this court on application of the defendants below (tr. 116-122). The execution of the judgment was stayed by the district court on the filing of bonds and the taking of appeal (tr. 83, 84), and this stay was continued on the filing of bonds when the writ of error was issued from this court (tr. 124-127).

Most of the questions raised by the plaintiffs in error are the same in the two cases. The question of the right to call a strike applies only to case No. 494, and of the right of the district court to issue an order requiring the persons named to appear as witnesses and testify before the Court of Industrial Relations applies only to case No. 154.

POINTS.

I. The case presents no federal question.

II. The decree appealed from was within the power of the court which made it, without express statute authority.

III. It was authorized by provisions of the Kansas statute, which were constitutional.

IV. The strike attacked the constitutional rights of the fuel company and its customers.

V. There has been no violation of any liberty of the plaintiffs in error.

VI. There has been no denial of the equal protection of the law.

VII. The Court of Industrial Relations is a valid administrative body.

VIII. The provisions of the statute are separable.

IX. The statute is not in conflict with the Clayton act or the Lever act.

X. In case No. 154 it was not necessary that notice should have been given of the application for the order directing the persons to appear as witnesses.

XI. In case No. 154 the district court had jurisdiction to issue the order directing the persons to appear as witnesses.

I.

THE CASE PRESENTS NO FEDERAL QUESTION.

The record shows that the district court of Crawford county, Kansas, issued an injunction on September 14, 1920, which was in full force when this case arose. This was a court of general jurisdiction both in law and in equity.

"There shall be in each county organized for judicial purposes a district court, which shall be a court of record, and shall have general original jurisdiction of all matters, both civil and criminal (not otherwise provided by law)."

General Statutes of Kansas, 1915, § 2957.

Whether this injunction was properly granted or not is a question not before this court, for the record in that case is not here, and there is nothing to indicate that there was any appeal from the decree of September 14.

The record only shows that the plaintiffs in error were brought before the court which issued that injunction, charged with contempt in violating it. They were found guilty, sentenced to imprisonment, and appealed from the sentence.

According to elementary principles recognized by state and federal courts alike, it was the duty of the plaintiffs in error to obey the injunction until set aside upon appeal or through some other orderly proceeding. Even if the injunction had infringed upon some right guaranteed to them by the constitution of the United States, this would not have rendered it void or given them any right to take the law into their own hands.

"While it is sparingly to be used, yet the power of courts to punish for contempts is a necessary and integral part of the independence of the judiciary, and is absolutely essential to the performance of the duties imposed on them by law. Without it they are mere boards of arbitration whose judgments and decrees would be only advisory.

"If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are courts impotent, and what the constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery."

Lamar, J., in *Gompers v. Bucks Stove & Range Co.*, 221 U. S. 418 (at p. 450).

Schwarz v. United States, 217 Fed. Rep. 866.

Brougham v. Oceanic Steam Navigation Co., 205 Fed. Rep. 857.

State v. Pierce, 51 Kan. 241.

Billard v. Erhart, 35 Kan. 616.

While an injunction granted by a court of plenary jurisdiction stands, it must be obeyed, and the court which granted it has the power to enforce obedience by punishing contempt.

The supreme court of Kansas states the law succinctly:

"The court must possess authority to punish contempt or it cannot discharge its functions as a court. . . . A court established by the constitution, such as the district court of Crawford county, may not be deprived of this power except by the constitution itself, and the Kansas constitution does not do it. . . ."

The appellants insisting that a statute forbade the injunction, the court continued:

"Let it be granted for the moment that the legislature intended this statute to be applicable to the case presented by the petition for injunction. It was within the province of the district court to interpret the statute and determine whether or not it did apply. The court had jurisdiction to adjudicate upon the subject. If it reached a wrong conclusion it did not forfeit jurisdiction. The injunction order was simply erroneous, the error was subject to correction by the ordinary method of appeal, and disobedience to the order constituted contempt." (pp. 139-140.)

"It is said the injunction was invalid as an attempt to enjoin a crime. If so, the injunction order was not void, and the defendants are precluded from attacking it in this proceeding." (p. 141.)

In re Debs, 158 U. S. 600.

If, as the courts below have found and as seems not to be seriously disputed, the plaintiffs in error violated the injunction, they were rightly committed, regardless of the various questions raised by the assignment of errors.

While the supreme court of Kansas discussed at length the constitutional arguments put forward by the plaintiffs in error, this was done in order that they might not "feel a rule of procedure has prevented full consideration of their case," the court expressly stating that, even if the injunction was improvidently granted, it "was not void and the defendants [now plaintiffs in error] are precluded from attacking it in this proceeding" (p. 141); also that, if the injunction order was erroneous, "the error was subject to correction by the ordinary method of appeal, and disobedience to the order constituted contempt." (p. 140.)

It is well settled that this court will not go into federal questions attempted to be raised by a writ of error to a state court if the decision of the court below can be rested on nonfederal grounds. Since in the present case there was ample basis for the order complained of regardless of the alleged federal questions, this court

will not disturb the decisions of the state courts and can only order that the writ of error be dismissed.

Southern Pacific Co. v. Schuyler, 227 U. S. 601.
Leathe v. Thomas, 207 U. S. 93.
Giles v. Teasley, 193 U. S. 146.
Hopkins v. McLure, 133 U. S. 380.
Hale v. Akers, 132 U. S. 554.

II.

THE KANSAS COURT HAD POWER WITHOUT STATUTE AUTHORITY TO ISSUE THE PERMANENT INJUNCTION AND THE DECREE APPEALED FROM IN No. 491.

The situation which led the court to issue the permanent injunction of September 14, 1920, is not disclosed, for the pleadings and evidence in the suit which resulted in that order are not in the record. According to the well-established rule, this court in such a case will assume that if any state of facts would justify the order of the Court, that state of facts existed in the case at bar.

Kearney v. Owin, 15 Wall 51.
Nashua Savings Bank v. Anglo-American Land Co., 189 U. S. 221.
Corinne Mill Co. v. Johnson, 156 U. S. 574.

The supreme court of Kansas in its opinion made this statement:

"The purpose of the injunction was not to enjoin crime, and bore no other relation to administration of the criminal law. The purpose was to prevent the irreparable injury which the petition for injunction alleged would occur, and which the court found would occur, unless the defendants were restrained from executing their designs. It might be the defendants would incur sentences to the penitentiary or to jail, but the imposition of those penalties would not fulfill the obligation of the state of Kansas to protect its people from the calamitous consequences of the defendants' wrongdoing, and for which there was no redress. *The court found that all the perils to the public welfare which accompanied the coal strike of the winter of 1919-'20, would again be incurred.* That strike caused industry to stop, caused commerce to be demoralized, caused food supplies to be reduced and cut off, caused schools to close, caused suffering in homes, and if the defendants had been permitted to have their way, would have caused the sick to languish and die in unwarmed hospital beds in the dead of winter. If those consequences were produced in a single village by blocking the highway over which necessaries of life were brought in, anybody would say blocking the highway was a public nuisance, and a court of equity could open the road. Multiplicity and magnitude of threatened disaster do not detract from authority of a court of equity over the few determined individuals who

propose to wreak the disaster. Ability of the defendants to paralyze the normal activities of a whole commonwealth did not free them from amenability to injunction. The district court was warranted in interfering on principles identical with those applied in abatement of public nuisances, and the court was not shorn of power because the defendants, if they persisted, would incidentally be guilty of crime.

"The general finding on which the injunction was allowed included a finding that the state would be prejudiced in the use of property which it held in the capacity of owner. Conviction and incarceration of the defendants would not get coal for the various institutions, educational, charitable, and correctional, which the state maintains in its own buildings, upon its own land. The authorities are in substantial accord that this special interest authorized the state to apply for, and authorized the district court to grant, the injunction; but this court holds that, aside from this indisputable ground, and without aid of the statute expressly authorizing actions of injunction in the name of the state to suppress public nuisances (Gen. Stat. 1915, sec. 7163, as amended by Laws of 1917, ch. 247, sec. 1), the district court was possessed of power to grant the injunction." (p. 141.)

"District No. 14, the United Mine Workers of America, comprising the coal-producing counties of Kansas, constitutes a principality, in Kansas but not of it, and ruled by force in medieval fashion. In his testimony given at the trial of this cause the defendant Howat told of calling the strike which constituted contempt of the injunction granted by the district court. A boy named Mishmash, employed in the Mackie mines, discovered he was more than nineteen years old, and claimed back pay, according to union contract, for full miner's wages accruing after he became nineteen. The evidence relating to the date of his birth was inconclusive, and controversy over the matter continued between the district board and the mine owners for a considerable period of time. The amount in dispute was about $225, the boy's mother needed the money, and the district board believed the mine owners were not acting fairly; therefore a strike was called. Portions of Howat's testimony follows:

"Q. Well, don't you know that if this boy had a claim for wages under a contract that you would recover it in court? A. No; I didn't know it. We never settled any cases that way.

. . . . . .

"Q. You think the boy couldn't collect the money in the courts? A. I couldn't say whether he could or not. I never tried it, and anyway, we have a contract which provides for it and we wasn't obliged to go to court.

. . . . . .

"Q. You don't go into court? A. No, sir; neither here nor in the other districts.

. . . . . .

"Q. You didn't read the injunction? A. No; never did.

. . . . . .

"Q. You don't recognize courts in the matter of settlement for wages? A. No, sir; we have a contract that covers that.

. . . . . .

"Q. You don't recognize that contracts are made to be enforced in courts, then? A. No, sir."

"Under this form of civil government there were 705 strikes in the coal mines of Kansas within a period of less than four years ending December 31, 1919. In the winter of 1919-'20 the purposes of the national strike were attempted to be carried out in District No. 14. The threatened consequences were so dire that the state took action in this court under the anti-trust statute, and the court appointed receivers for the coal mines. The receivers encountered difficulty in securing competent managing operators, because those who were familiar with the mines and methods of coal production in that district feared they might not survive an attempt to supply the people of the state with fuel. With splendid heroism, ex-service men, college students and others of patriot mold volunteered to do the work. Prudence demanded they be given military protection, and a regiment of the Kansas National Guard was sent with them to the mines. General Wood also stationed a troop of regular army soldiers in the vicinity. On the way to Pittsburg movement of the state troop train was insufferably delayed until a sharp order to proceed was given. Then the train was wrecked. After the volunteers and their military escort arrived at Pittsburg some sniping occurred, but without fatality, some mining machinery was disabled, and some hidden stores of dynamite were discovered. The determined character of the coal-producing enterprise seems then to have been appreciated, and further violence was not offered. The sublimate cruelty of the strike method, however, was displayed in the treatment of the Pittsburg hospital. It was surrounded with coal mines. There were 15,000 idle miners in the district. The hospital was filled with sick, many of whom were miners, and the winter weather was severely cold. Coal was denied to this hospital by the strikers, although deprivation for a single day meant death to patients." (pp. 154-155.)

It is not a very violent presumption that this statement of facts by the court was accurate, and this court must assume that it was. If such a state of facts existed, the permanent injunction was justified, and the violation of its terms was a contempt for which the appellants were properly punished.

For this conclusion the case of *Debs, Petitioner*, 158 U. S. 564, is ample authority. The situation presented in that case is legally identical with the situation in the case at bar.

The jurisdiction of the federal court in the Debs case came from

the power to regulate interstate commerce and the power to insure the transmission of the mails.

The jurisdiction of the Kansas court came from its control over the persons and property within the borders of the state and the power to preserve the public peace and prevent a public nuisance.

In each case the jurisdiction was plenary.

In the Debs case the United States by its attorney-general and district attorney brought a bill to enjoin certain labor leaders and their followers from proceeding with a conspiracy to control the railroads which connected Chicago with the rest of the country, prevent them from carrying on their duties as common carriers, and transporting the mails and generally from promoting a strike. Among other allegations it was charged that the supply of coal and fuel for consumption throughout the different states of the Union had been cut off and interfered with. The allegations in the bill brought by the state of Kansas differ somewhat, but in legal effect they are the same. The court held that the injunction was properly granted, and that Debs and his associates who violated it were properly punished for contempt. In the course of the opinion Mr. Justice Brewer said:

"Every government, entrusted, by the very terms of its being, with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the exercise of the one and the discharge of the other, and it is no sufficient answer to its appeal to one of those courts that it has no pecuniary interest in the matter. The obligations which it is under to promote the interest of all, and to prevent the wrongdoing of one resulting in injury to the general welfare, is often of itself sufficient to give it a standing in court."

Where interstate commerce is involved that power must be exercised by the federal government. In other cases it must be exercised by the state.

Among the court's conclusions is this: "that the proceeding by injunction is of a civil character, and may be enforced by proceedings in contempt; that under such complaint the circuit court had power to issue its process of injunction; that it having been issued and served on these defendants, the circuit court had authority to inquire whether its orders had been disobeyed, and when it found that they had been, then to proceed under section 725, Revised Statutes, which grants power 'to punish, by fine or imprisonment, disobedience, by any party or other person, to any lawful writ, process, order, rule, decree or command,' and enter the

order of punishment complained of; and, finally, that the circuit court, having full jurisdiction in the premises, its finding of the fact of disobedience is not open to review on *habeas corpus* in this or any other court."

Under the authority of the Debs case the courts of Kansas had power to issue the injunction, had power to determine whether it had been violated or not, and having found that it was violated, to punish the violators for contempt.

The suggestion that the Kansas court was interfering with interstate commerce and therefore going beyond its jurisdiction is without merit.

"The making of goods and the mining of coal are not commerce, nor does the fact that these things are to be afterwards shipped or used in interstate commerce make their production a part thereof."

Hammer v. Dagenhart, 247 U. S., at p. 272.

Crescent Cotton Oil Co. v. Mississippi, Adv. Ops., p. 55.

III.

THE INJUNCTION WAS AUTHORIZED BY THE KANSAS STATUTE ESTABLISHING THE COURT OF INDUSTRIAL RELATIONS, WHICH IS CONSTITUTIONAL.

Since this court may, like the supreme court of Kansas, deem it wise to express its views on the points which the plaintiffs in error seek to raise, we will discuss these points briefly. The plaintiffs in error apparently assume that the propriety of issuing the injunction depended on the constitutionality of the general plan for the adjustment of trade disputes embodied in the act creating the Court of Industrial Relations. This view of the proceedings is manifestly wrong. If, to be sure, the general scheme of the act is constitutional there can be no valid objection to an injunction issued in pursuance of that scheme. But it is most important to observe that the injunction now in question was not issued in furtherance of any order made by the Court of Industrial Relations. In the fourth paragraph the injunction restrains the defendants from "directing, ordering or in any manner bringing about the hindering, delaying, interference with or suspension of the operation of any coal mines in the counties of Crawford, Cherokee or Osage." The subsequent paragraphs, which are wholly independent of the fourth, forbid various acts calculated to prevent the Court of Industrial Relations from performing the duties imposed upon it by the statute, but are not based upon any order of that court.

It seems plain that these latter paragraphs of the injunction were

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warranted, regardless of the decision which may ultimately be made as to whether the establishment of the Court of Industrial Relations was constitutional. No government worthy of the name can allow the authority of its officers to be questioned in any such disorderly fashion. As was said by Vice President Coolidge in dealing with the Boston police strike when governor of Massachusetts:

"There is no right to strike against the public safety by anybody, at any time, anywhere." (Telegram to Samuel Gompers, September 14, 1919, quoted in "Have Faith in Massachusetts," p. 223.)

This utterance, now known throughout the world, simply expresses another aspect of the principle embodied in the common-law rule that a conspiracy to prevent a magistrate from performing his functions is none the less indictable because the magistrate did not have jurisdiction to deal with the matter in question.

Gallagher v. People, 211 Ill. 158.

It is unnecessary, however, to enlarge on this point, as the acts for which the plaintiffs in error were committed unquestionably violated the fourth paragraph of the injunction, and this paragraph finds ample support in section 17 of the statute, which provides in general terms that strikes in the industries affected shall be unlawful. When it is considered that section 28 of the statute declares that "if any section or provision of this act shall be found invalid by any court, it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section or provision," and that "the act as a whole shall not be declared invalid by reason of the fact that one or more sections or provisions may be found invalid by any court," it will be seen that so far as the statute is concerned, the only constitutional question is whether the provisions forbidding strikes in the industries enumerated in the act are constitutional. If the state could establish such a rule of law the constitutional objections fail, since the questions whether it was proper to grant an injunction to restrain strikes of this kind, and whether the attorney-general had standing to apply for such an injunction, were matters of state law. The proceedings afforded the persons concerned full opportunity to be heard before an impartial tribunal, and this is all that the federal constitution requires.

Simon v. Craft, 182 U. S. 427.

Kansas v. Ziebold, 123 U. S. 623, 670.

Hurtado v. California, 110 U. S. 516.

Walker v. Sauvinet, 92 U. S. 90.

As is shown below, it is not necessary in order to sustain the statute to hold in broad terms that a state may forbid strikes generally.

since it applies only to industries affected by a public interest, and provides machinery whereby all the objects for which a strike might on any theory legitimately be undertaken may be attained through the orderly processes of the law, so that, even if the proposition were not maintainable in unqualified form, the present statute would nevertheless stand. We believe, however, that, upon an examination of the principles underlying the question, the power of a state to establish a general prohibition of strikes clearly appears.

I. It is Competent for a State to Declare that Strikes Shall Be Unlawful Generally.

For the purpose of testing the constitutionality of section 17 of the statutes, it is useful to consider how the case would stand if the statute had not been enacted and the district court had issued the injunction on the theory that, according to the common law of Kansas, all strikes are unlawful. Could it be contended that there was anything in the thirteenth or fourteenth amendments repugnant to such a common-law rule? Manifestly not, in view of the great uncertainty which, until well into the nineteenth century, existed as to whether strikes did not constitute criminal offenses at common law. Both in England and in the United States the authorities prior to *Commonwealth v. Hunt*, 4 Met. 111 (decided in 1842), tended to hold that a strike was a criminal conspiracy, and it is noteworthy that, while the ultimate result in *Commonwealth v. Hunt* was in favor of the defendants, the law of Massachusetts was in so much doubt up to that time that Thacher, J., who presided at the trial, ruled in very broad terms that the formation of trade unions was unlawful (Thacher's Cr. Cas., p. 609).

Rex v. Journeymen Tailors, 8 Mod. 11.

Rex v. Mawbey, 6 T. R. 619, 636.

Walsby v. Anley, 3 E. & E. 516, 523.

People v. Melvin, 2 Wheeler's Cr. Cas. 262.

People v. Fisher, 14 Wend. 9.

In at least one state, as in England, it is still held that a strike is unlawful at common law and can be justified only as the rule has been changed by statute.

Cote v. Murphy, 159 Penn. St. 420, 425.

Quinn v. Leathem, [1901] A. C. 495, 526, 541.

Regina v. Bunn, 12 Cox C. C. 316.

Springhead Spinning Co. v. Riley, L. R. 6 Eq. 551.

Judicial decisions in some of the states have to a limited extent qualified the common law and have held that strikes are lawful

where called for the purpose of obtaining better wages or working conditions. But strikes for other purposes are still held unlawful. There are many recent decisions holding strikes or actions toward strikes for certain purposes unlawful, some of which we cite:

"Every man, as I have stated, has a right to leave the service of his employer if he is not satisfied with the wages he gets, but men ought not to combine together and cause at once a strike among all railroad employees, so as to prevent the running of trains, because the injury there is public in its character; it affects the whole country, as it were, and not a particular community or a particular neighborhood, and in several states it is made a public offense."

King v. Ohio, 7 Russell, 329.

It is unlawful to induce employees of a railroad receiver to quit their work in order to prevent the railway from hauling Pullman cars. In this case there is a review of authorities on the subject of boycotts enforced by means of strikes.

Thomas v. Cincinnati, N. O. & T. P. Ry. Co., 62 Fed. 803.

The following have been held to be unlawful:

A combination of third parties to induce employees to quit work in order to obtain higher wages.

Old Dominion Steamship Company v. McKenna, 30 Fed. 48.

A combination of persons to induce employees to break their contract of employment or to quit work.

Employing Printers Club v. Du Bloose Co., 122 Ga. 509; 50 S. E. 353; 69 L. R. A. 90, 95, 96; 106 Am. St. Rep. 137.

A combination to induce employees to break their contract of employment.

Vegelahn v. Guntner, 167 Mass. 92; 44 N. E. 1077; 35 L. R. A. 722; 57 Am. St. Rep. 443.

South Wales Miners' Federation v. Glamorgan Coal Co., 1905 A. C. 239, 244, 255; 2 A. & E. Ann. Cas. 436.

Walker v. Cronin, 107 Mass. 555.

Thacker Coal & Coke Company v. Burke, 59 W. Va. 253; 53 S. E. 161; 5 L. R. A., n. s., 1091; 8 Ann. Cas. 885.

Thomas v. C., N. O. & T. P., 62 Fed. 803, 818.

A strike to compel workmen to break their contract of employment.

Folsom v. Lewis, 208 Mass. 336; 94 N. E. 316; 35 L. R. A., n. s., 787.

To break their contract for service at will.

Thacker Coal & Coke Company v. Burke, 59 W. Va. 253; 53 S. E. 161; 5 L. R. A., n. s., 1091; 8 Ann. Cas. 885.

To stop work in violation of a contract of employment.

Mapstrick v. Ramge, 9 Neb. 390; 2 N. W. 739.

Hitchman Coal & Coke Co. v. Mitchell, 212 Fed. 512, 549, 550, 554, 556, 557.

Jonas Glass Company v. Glass Bottle Blowers' Association, 77 N. J. Eq. 219, 221, 223, 224; 41 L. R. A., n. s., 445; 79 Atl. 262.

To maintain a patrol in order to induce persons not to work for a party.

Vegelahn v. Guntner, 167 Mass. 92, 99, 100.

To strike in order to prevent the hauling of cars by one railroad for another.

Waterhouse v. Comer, 55 F. 149, 155, 156.

Toledo, Ann Arbor & North Mich. Rld. v. Penn. Co., 54 Fed. 730, 746.

To strike in order to prevent a railroad hauling Pullman cars.

U. S. v. Elliott, 62 Fed. 801.

To strike to compel an employer to abolish piece work.

Davis Machine Company v. Robinson, 41 Misc. 329; 84 N. Y. Sup. 837, 839, 841.

To strike to compel an employer to cease using machinery.

Hopkins v. Oxley Stave Co., 83 Fed. 912; 28 C. C. A. 99.

To threaten to strike in order to prevent a party furnishing materials to be used in the work.

Burnham v. Dowd, 217 Mass. 351, 356, 357.

To strike to compel an employer not to do work on a building where work was being done by another union which the strikers' union claimed its members should do.

Pickett v. Walsh, 192 Mass. 572; 78 N. E. 753; 6 L. R. A., n. s., 1067; 116 Am. St. Rep. 272.

To strike to compel an employer to hire only union men.

Folsom v. Lewis, 208 Mass. 336; 94 N. E. 316; 35 L. R. A., n. s., 787.

State v. Glidden, 55 Conn. 46; 8 Atl. 890; 3 Am. St. Rep. 23.

To strike to compel an employer to hire a particular person.

Commonwealth v. Carrer, 3 Pittsburgh, Pa. 143.

To threaten to strike in order to compel an employer to discharge certain employees.

State v. Donaldson, 32 N. J. L. 151; 90 Am. Dec. 649.

To threaten to strike in order to cause the discharge of a non-union workman.

Lucke v. Clothing Cutters & Trimmers Assembly, 77 Md. 396, 402, 407.

To strike to prevent others from obtaining work.

Erdman v. Mitchell, 207 Pa. 79, 26 Atl. 327; 63 L. R. A. 534; 99 Am. St. Rep. 783.

To strike in order to enforce the will of the strikers as to the method of conducting the business.

Hitchman Coal & Coke Co. v. Mitchell, 212 Fed. 512, 549, 550, 554, 556, 557.

State v. Stewart, 59 Vt. 273; 9 Atl. 559; 59 Am. St. R. 710.

To strike to compel an employer to join a master plumbers' association.

Commonwealth v. Chrysta, 24 Misc. 226, 53 N. Y. Sup. 668.

To induce employees to quit work for the purpose of extorting money from the employer.

State v. Dalton, 134 Mo. App. 517, 535, 538; 114 S. W. 132.

To extort money from an employer as a consideration for permitting strikers to return to work who had made a settlement of the controversy.

People v. Barondess, 133 N. Y. 649, 31 N. E. 240, 241.

It is unlawful to maliciously induce another to break his contract with the plaintiff.

Eagle v. St. Paul, etc., Railroad Co., 151 U. S. 1, 13, 14, 15.

Tubular Rivet & Stud Company v. Exeter Boot & Shoe Company, 159 Fed. 824, 830; 86 C. C. A. 648.

A conspiracy was held unlawful to persuade employees to join a union in violation of their agreement with their employer and to continue in the employer's service for the purpose of ultimately coercing the employer, through a strike or a threat of one, to enter into a closed-shop agreement.

Hitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229.

A statute of Colorado has been held valid which made unlawful a lockout or strike on account of any dispute prior to, or during an investigation, hearing or arbitration by the State Industrial Commission. The coal-mining business was held to be affected with a public interest, and the statute did not violate due process of law the obligation of a contract and did not create any involuntary servitude.

People of the State of Colorado v. United Mine Workers of America, —— Colo. ——, decided April 4, 1921. Rehearing denied October 3, 1921. 201 Pac. Rep. 54.

Congress has made it a misdemeanor to persuade or induce an artificer or workman in an arsenal or armory to leave his employment under the circumstances indicated by the statute which we set out:

"SECTION 10207 (Crim. Code, sec. 43). *Enticing workmen from arsenals or armories.* Whoever shall procure or entice any artificer or workman retained or employed in any arsenal or armory to depart from the same during the continuance of his engagement, or to avoid or break his contract with the United States; or whoever, after due notice of the engagement of such workman or artificer, during the continuance of such engagement, shall retain, hire or in any wise employ, harbor or conceal such artificer or workman, shall be fined not more than fifty dollars, or imprisoned not more than three months, or both."

Sec. 10207, U. S. Compiled Stat. 1918, Compact Ed.

The qualifications of the common-law rule in some states by which strikes have been permitted for better wages or improved working conditions have been made because the courts, weighing benefits against injuries, thought that it would be better to permit strikes to a limited extent. The courts in such cases have been legislating judicially.

It is peculiarly a legislative function to weigh such opposing considerations and determine which should prevail. When a legislature decides that the public injuries arising from strikes in certain industries of great public use are so serious that they cannot be allowed, it is acting in the performance of its usual functions, and it is not competent for a court to weigh the opposing considerations of public policy and to determine that the problem should have been solved by the legislature the other way. It is sufficient that there is some ground for such a legislative conclusion.

In order to hold that there is anything in the thirteenth and fourteenth amendments which prevents a state from following the early common-law authorities against strikes, it is necessary to assume that the language of these amendments means something entirely different from the similar language which had been contained in many of the state constitutions ever since the Revolution and which had never been thought to have any bearing upon such questions. No argument, it is believed, is necessary to show that such a proposition cannot be maintained.

Brown v. New Jersey, 175 U. S. 172.

We have, then, a statute setting up a rule which would be unobjectionable as a rule of common law, and from this it follows that the statute is not open to constitutional objections. No one, as has often been said, has any vested interest in a doctrine of the common law or any right to complain of a statute establishing a rule which, when the question first arose, the courts might well have adopted without the aid of legislation.

New York Central Railroad Co. v. White, 243 U. S. 188, 198.

The matters now in controversy belong, moreover, to a class in which this court is especially reluctant to override the constituted authorities of the states. The theory upon which the legislature and the courts of Kansas have evidently proceeded is that strikes are in the nature of public nuisances and may be enjoined accordingly, and, as has often been declared, the determination what shall in a particular state be deemed public nuisances, or what measures are necessary for the preservation of the public health or safety, is peculiarly for the authorities of that state, and is a matter in which this court never interferes unless some gross disregard for the principles of natural justice is shown.

"But whatever the tribunal, in questions of this kind, great caution must be used in overruling the decision of the local authorities, or in allowing it to be overruled. No doubt this court has gone a certain distance in that direction. (*Dobbins v. Los Angeles*, 195 U. S. 222; *Lochner v. New York*, 198 U. S. 45, 58 *et seq.*) But it has expressed, through the mouth of the same judge who delivered the judgment in the case last cited, the great reluctance that it feels to interfere with the deliberate decisions of the highest court of the state whose people are directly concerned. (*Welch v. Swasey*, 214 U. S. 91, 106.) The reluctance must be redoubled when, as here, the opinion of that court confirms a specific determination concerning the same spot previously reached by the body that made the law."

Holmes, J., in *Laurel Hill Cemetery v. San Francisco*, 216 U. S. 358, at p. 365.

"That danger is the test may be conceded, but there may be degrees of it, and a difference in degree may justify classification. (*Mutual Loan Co. v. Martel*, 222 U. S. 225, 236.) Who is to judge of the danger, whether absolutely considered or comparatively considered? Is it a matter of belief or proof? If of belief, we should be very reluctant to oppose ours to that of the legislature of the state, informed, no doubt, by experience of conditions and fortified by presumptions of legality, and confirmed, besides, by the opinion of the supreme court of the state. (*Laurel Hill Cemetery v. San Francisco*, 216 U. S. 358, 365; *Adams v. City of Milwaukee*, ante, p. 572.) If of proof, there is none in the record. . . . The legislation cannot be judged by abstract or theoretical comparisons. It must be presumed that it was induced by actual experience, and New York, it is said, has been induced by a like experience to enact like legislation. If it be granted that the legislative judgment be disputable or crude, it is notwithstanding not subject to judicial review. We have said many times that the crudities or even the injustice of state laws are not redressed by the fourteenth amendment."

McKenna, J., in *Chicago Dock & Canal Co. v. Fraley*, 228 U. S. 680, at page 686.

"It has been said many times that each act of legislation has the support of the presumption that it is an exercise in the interest of the public. The burden is on him who attacks the legislation, and it is not sustained by declaring a liberty of contract. It can only be sustained by demonstrating that it conflicts with some constitutional restraint or that the public welfare is not subserved by the legislation. The legislature is, in the first instance, the judge of what is necessary for the public welfare, and a judicial review of its judgment is limited. The earnest conflict of serious opinion does not suffice to bring it within the range of judicial cognizance."

McKenna, J., in *Erie Railroad Co. v. Williams*, 233 U. S. 685, at p. 699.

It is, of course, true that not all strikes tend in the same degree to disturb the peace and to prejudice the public welfare. It may occasionally happen that the circumstances of a particular strike are such that the direct effect upon the public is very small. This, however, is no reason why the state should not adopt a rule applicable to all strikes alike. This court will not go behind the determination of the state authorities that in order to deal with the problem effectually it is necessary to deal with all strikes in the same way, even though this results in preventing strikes not immediately detrimental to the public interest.

Hebe Co. v. Shaw, 248 U. S. 297.

Purity Extract & Tonic Co. v. Lynch, 226 U. S. 192.

Without considering the public use affecting the industries enumerated—a point discussed later—the legislature might well have deemed that strikes in these industries worked peculiar injury to the public and so called for special statutory treatment.

"The fourteenth amendment is not a pedagogical requirement of the impracticable. The equal protection of the laws does not mean that all occupations that are called by the same name must be treated in the same way. The power of the state 'may be determined by degrees of evil or exercised in cases where detriment is especially experienced.' (*Armour & Co. v. North Dakota*, 240 U. S. 510, 517.) It may do what it can to prevent what is deemed an evil and stop short of those cases in which the harm to the few concerned is thought less important than the harm to the public that would ensue if the rule laid down were made mathematically exact. The only question is whether we can say on our judicial knowledge that the legislature of Arizona could not have had any reasonable ground for believing that there were such public considerations for the distinction made by the present law. The deference due to the judgment of the legislature on the matter has been emphasized again and again. (*Heb Co. v. Shaw*, 248 U. S. 297, 303.) Of course this is especially true when local conditions may affect the answer—conditions that the legislature does but that we cannot know. (*Cusack Co. v. Chicago*, 242 U. S. 526, 530, 531.)"

Holmes, J., in *Dominion Hotel, Inc., v. Arizona*, 249 U. S. 265, at p. 268.

Middleton v. Texas Power & Light Co., 249 U. S. 152.

Mountain Timber Co. v. Washington, 243 U. S. 219.

Martel v. Mutual Loan Co., 222 U. S. 225.

Nor is it important if the act does not contain an express prohibition of lockouts, correlative to the prohibition of strikes. Apart from the fact that lockouts are in effect forbidden by sections 6, 7 and 16, the short answer is that a lockout is the act of the individual employer, whereas a strike is the act of several employees acting in concert. It is elementary that a state may declare unlawful a combination to do what an individual is free to do.

Drew v. Thaw, 235 U. S. 432.

Atkins v. Wisconsin, 195 U. S. 194; 49 L. Ed. 154.

Lauck v. Cal. State Fed. of Labor, 135 F. 71, 84.

Burnham v. Dowd, 217 Mass. 351; 104 N. E. 841; 51 L. R. A. 778, 784.

Cote v. Murphy, 159 Pa. St. 420.

Chicago W. V. Coal Co. v. People, 214 Ill. 421, 73 N. E. 770, 775, 776.

Franklin Union v. People, 220 Ill. 355; 4 L. R. A. 1001, 1013; 110 Am. St. R. 248; 77 N. E. 176.

State v. Stock Exchange, 211 Mo. 181; 109 S. W. 675, 780, 781.

Lohse Patent Door Co. v. Fuelle, 215 Mo. 421; 114 S. W. 997, 1012, 1013; 22 L. R. A., n. s., 607; 128 Am. St. R. 492.

State v. Dalton, 134 Mo. App. 517, 535, 538; 114 S. W. 132.

State v. Huegin, 110 Wis. 189; 85 N. W. 1046, 1065, 1066; 62 L. R. A. 700.

Brown v. Jacobs Pharmacy Co., 115 Ga. 431; 41 S. E. 553; 57 L. R. A. 547, 554, 555; 90 Am. St. R. 126.

Bailey v. Master Plumbers' Assn., 103 Tenn. 99; 46 L. R. A. 561, 564-566.

Vertue v. Lord Clive, 4 Burrow 2472; 98 Eng. R., full reprint, 296.

Clifford v. Brandon, 2 Campbell, 358, 369.

"*In re Lennon*, 166 U. S. 458, 41 L. Ed. 1110, a bill in equity was filed in the United States district court by the Toledo, Ann Arbor & Northern Michigan Railway Company to restrain the Lake Shore & Michigan Railroad Company and its employees from refusing to handle cars interchanged between complainants' company and the defendant's company. There was a strike upon the complainant railway. Lennon was a locomotive engineer for the Lake Shore & Michigan Railway, and refused for five hours to take into the train which he was pulling an empty car of the complainant railway. He was punished for contempt of court for violation of the injunction issued upon the bill in equity, and the punishment was upheld. The court said, at page 557:

> "'It is not necessary for us to decide whether an engineer may suddenly and without notice quit the service of a railway company at an intermediate station or between stations, though cases may be easily imagined where a sudden abandonment of a trainload of passengers in an unfrequented spot might imperil their safety and even their lives. It is sufficient, in the present case, to observe that the court found, upon testimony, that the petitioner did not quit in good faith in the morning, but intended to continue in the company's service, and his conduct was a trick and device to avoid obeying the order of the court.'"

In the foregoing case the stoppage of work by Lennon was not in the exercise of any liberty to quit work, but was for the purpose of compelling the railway company for which he was employed to join in the refusal to handle cars of another railway company. In the present case the temporary withdrawal from work by the strikers was not the exercise of a liberty to stop work, but was to punish the fuel company and its customers until the fuel com-

pany should be forced to comply with the demand of District No. 14 to pay the Mishmash claim. The strikers never did throw up their jobs. They abstained from work excepting on the day of the clean-up, February 9, for the purpose of coercing the fuel company into obedience to the order of District No. 14. They returned to work February 9 and cleaned up and took out some coal they had already mined in order that they might be paid for that coal, and then they took their tools and remained away from work for a further time. This clean-up was made pursuant to the orders of members of the district board and evidently to obtain money for the strikers. (Tr. 60, 61, 62, 38.)

2. There Is No Constitutional Right to Strike.

The fundamental difficulty with the position of the plaintiffs in error is that they assume the existence of a so-called "right to strike."

The attempt to base an argument on the thirteenth amendment involves this assumption. Such an argument confuses the right to quit work with the right to strike. No doubt the amendment secures to every man the right to quit work at will, subject to whatever liability he may incur for breach of contract, but, as pointed out above, a strike is something essentially different from the mere quitting of work by an individual, being *ex vi termini* a suspension of work by a number of employees acting in concert for the purpose of obtaining some common object. Even the right of the individual to quit work, moreover, is subject to regulation by the state to a considerable extent, so much so that an eminent member of this court has expressed the opinion that a statute making it a crime to quit work in violation of a contract is constitutional:

"The thirteenth amendment does not outlaw contracts for labor. That would be at least as great a misfortune for the laborer as for the man that employed him. For it certainly would affect the terms of the bargain unfavorably for the laboring man if it were understood that the employer could do nothing in case the laborer saw fit to break his word. But any legal liability for breach of a contract is a disagreeable consequence which tends to make the contractor do as he said he would. Liability to an action for damages has that tendency as well as a fine. If the mere imposition of such consequences as tend to make a man keep to his promise is the creation of peonage when the contract happens to be for labor, I do not see why the allowance of a civil action is not, as well as an indictment ending in fine. Peonage is service to a private master at which a man is kept by bodily compulsion against his will. But the creation of the ordinary legal motives for right conduct does

not produce it. Breach of a legal contract without excuse is wrong conduct, even if the contract is for labor, and if a state adds to civil liability a criminal liability to fine, it simply intensifies the legal motive for doing right; it does not make the laborer a slave.

"But if a fine may be imposed, imprisonment may be imposed in case of a failure to pay it. Nor does it matter if labor is added to the imprisonment. Imprisonment with hard labor is not stricken from the statute books. On the contrary, involuntary servitude as a punishment for crime is excepted from the prohibition of the thirteenth amendment in so many words. Also the power of the states to make breach of contract a crime is not done away with by the abolition of slavery. But if breach of contract may be made a crime at all, it may be made a crime with all the consequences usually attached to crime. There is produced a sort of illusion if a contract to labor ends in compulsory labor in a prison. But compulsory work for no private master in a jail is not peonage. If work in a jail is not condemned in itself, without regard to what the conduct is it punishes, it may be made a consequence of any conduct that the state has power to punish at all. I do not blink the fact that the liability to imprisonment may work as a motive when a fine without it would not, and that it may induce the laborer to keep on when he would like to leave. But it does not strike me as an objection to a law that it is effective. If the contract is one that ought not to be made, prohibit it. But if it is a perfectly fair and proper contract, I can see no reason why the state should not throw its weight on the side of performance. There is no relation between its doing so in the manner supposed and allowing a private master to use private force upon a laborer who wishes to leave."

Holmes, J., in *Bailey v. Alabama*, 219 U. S. 219, at p. 246.

There is, in short, no "right to strike" except that, just as one may without incurring liability do any act which is not forbidden by some rule of law, a person who engages in a strike is not subject to legal proceedings unless the law of the state where the strike takes place forbids it, but the constitution cannot be stretched so as to invalidate such a rule of state law if recognized by the local courts. This was pointed out by Mr. Justice Brandeis in a recent case:

"Because I have come to the conclusion that both the common law of a state and a statute of the United States declare the right of industrial combatants to push their struggle to the limits of the justification of self-interest, I do not wish to be understood as attaching any constitutional or moral sanction to that right. All rights are derived from the purposes of the society in which they exist: above all rights rises duty to the community. The conditions developed in industry may be such that those engaged in it cannot continue their struggle without danger to the community. But it is

not for judges to determine whether such conditions exist, nor is it their function to set the limits of permissible contest and to declare the duties which the new situation demands. This is the function of the legislature which, while limiting individual and group rights of aggression and defense, may substitute processes of justice for the more primitive method of trial by combat."

Duplex Printing Press Co. v. Deering, 254 U. S. 443, at p. 488.

The existence of the so-called "right to strike" may also be tested by considering the basis upon which the relation of employer and employee rests. The employee has made some contract in regard to his labor with his employer as to the character of the work, the length of time during which the work must be performed, the wages to be paid, and the conditions of the labor in other respects. He has no rights whatever except those which the contract gives him. If he leaves when his contract is ended no one can complain, but when his contract ceases his interest ceases also, because it is derived from the contract, endures while the contract lasts, and ends with the contract.

If he abandons his labor in violation of his contract he clearly has no further right against the employer because he has elected to break the tie between them. He may be liable for damages for a breach of the contract, and it may be possible to collect them on account of his poverty or the disproportionate expense of suit, but certainly by breach of contract his rights against his employer are terminated.

With this individual right to leave the employment—subject, of course, to a claim for damages if one exists—the act does not interfere. When, however, what is technically called a strike occurs, it is a combination of men who, whether their contracts have terminated or they have broken them by ceasing to labor, have no right whatever against their employer, and the effort which the laborers now make to retain a right to labor in the mine where no contract gives them that right is one which the law should not for a moment countenance or sustain. A laborer has no more right than other citizens. The law is no respecter of persons, and no other citizen can assert rights under a contract if he has chosen to terminate it by violating its terms. If he is at fault in dealing with the other party his rights are terminated by his own election not to keep his contract. The strike, as now conducted, is an attempt by people to hold the property belonging to their employer idle while they by picketing or other devices make it difficult for him to obtain employees, and seek to drive him back into engaging

them again on terms which he is not willing to make voluntarily. That is in form analogous to blackmail, for it compels a person to make a contract with another, not because it is one that he wishes to make, but because he is threatened with such loss he cannot afford to refuse. No court of justice should countenance any such position as this, nor can there be any constitutional right to strike in this way.

Upon principle, as well as upon authority, the power of the state to forbid strikes is clear. Whatever a man has—his life, his property and his labor—is held in trust for the public, and when the public interest demands it the state can compel him to obey its call. If war breaks out every citizen may be drafted into the army or the navy, or compelled to work in a workshop or in the fields to produce the weapons, the ammunition, the food which are needed for the prosecution of the war. In this crisis the private rights yield to the public interest. In like manner, in peace a man may be called to serve on the jury during a trial lasting, perhaps, six months, no matter what his private interests may be, and in certain classes of cases may be secluded from any intercourse with outside persons. He may be summoned as a witness and kept in attendance on a case which in no way concerns him, and only concerns the public in so far as is necessary for the orderly administration of justice. If he is a sailor on board ship he is bound to obey the orders of his commanding officer on penalty of death for mutiny, though the number of people on board may be very small and the cargo insignificant. The same considerations could justify a law forbidding a train crew to desert the train. The solitary question in every case is whether the public interest requires that his individual property or his individual right shall yield to the public demand. The legislature, which represents the whole people, has the ultimate power to decide what the public interest requires, and what concessions must be made by the private citizen in order to meet the demand.

The first duty of any government is to preserve the public peace—to insure the orderly administration of justice within its jurisdiction. That this is the first purpose of government is perfectly apparent from the phraseology of the law. The man who is indicted is charged with a crime against the peace of the king or against the peace of the commonwealth, according to the form of government under which he lives. The man who quarrels with another and threatens violence is made to give bond, not solely that he will

abandon his purpose of attacking his enemy, but that he will keep the peace. No private citizen is permitted to collect a debt by physical violence upon the debtor, or to redress any wrong by force not merely because the public cares what mischief is done to the man that is injured, but because the peace of the community cannot be disturbed and its business arrested by the quarrels between individuals.

It is clear that the disturbance which contests between individuals may cause is nothing to that which will follow contests between two great bodies of men who differ as to their respective rights, more especially when, as now in practice, one body of men undertakes to put the public to great inconvenience or suffering, or impose upon it enormous loss in order that for the purpose of escaping this loss or this suffering the public may exercise pressure upon the other party. The people of any community are dependent on the regular supply of all the essentials of life, food, clothing, fuel, and also have the right not to have the customary agencies of transportation interfered with or delayed, since such interruption will interfere with the regular supply of what the community must have. Therefore the right of the individual to leave his work must be subject to the paramount right of the public. The engineer who is running a train from one great center to another can no more stop in the middle of his journey in some desolate place and tell his passengers he will not go on unless he is paid a considerable sum of money by them than a sailor aboard ship can mutiny to obtain some advantage to himself at the expense of the voyage. The principle admits no distinction.

The district court was, of course, not bound to find that anything was actually due Mishmash, and, in the absence of such a finding, this court cannot, even if it accepts the statements of the plaintiffs in error as to their objects in calling the strike, regard the strike as anything but a conspiracy to extort money not legally payable. But, apart from this, it must be held that, on the view most favorable to the plaintiffs in error, they called a strike of more than 100 men, stopped the production of more than 300 tons of coal a day, and continued the strike indefinitely in order to make the company pay a claim nearly four years old for $225, instead of letting the claimant resort to the courts of Kansas to collect his debt, as any citizen of Kansas except a member of a labor union would have been obliged to do. In brief, the situation is not different from that which would arise if the bar association of a great city arrested all litiga-

tion and all work in the courts in order that one member of the bar might collect a fee of $50. The mere statement of such a case should be sufficient to show that such action cannot be legal. There is, however, a very respectable authority so directly in point that we take the liberty of referring to it:

"If Demetrius, and the craftsmen which are with him, have a matter against any man, the law is open, and there are deputies: let them implead one another."

Acts of the Apostles, xx:38.

If an invading army were planning to bring about in Kansas such conditions as were created there in 1919 by a general strike of coal miners, causing the public to starve, the operation of the industries to be suspended, people in the hospitals to die, creating, in other words, in Kansas the same things which were created by the action of the German army in destroying the coal mines in France, every power of the state would be exhausted to resist the army and defeat that purpose. The lives of citizens, their property and their labor, would be thrown into the scale, and every effort exhausted to prevent so great a public calamity. When the very same consequences are threatened, not by a hostile army, but by a body of reckless persons, considering their own interest alone and not the interest of the public, is it possible that the state is to be held powerless to prevent it? Can the United States say to the citizens, "You shall not use your own property in certain ways, you shall not make such and such business contracts; because they tend to raise the prices of articles of private necessity," as the Sherman act does? Is it possible that they can say to the great carriers, "You must take what the interstate-commerce tribunal fixes as the proper rate; you must pay what the Railroad Labor Board requires you to pay; you have no control whatever over either what it costs you to run your business or what you receive for so doing," and that the state of Kansas cannot say to a body of residents, "You shall not undertake to control the coal mines of the state against the interests of the public, and least of all can you arrest the whole life of the state in order to collect for some one a bill of $225"? These defendants were enjoined because they undertook to do that, and there surely must be power enough in the state of Kansas to justify the injunction which the plaintiffs in error now question. If this is not so, the court will decide that the man who is performing manual labor in certain walks of life belongs to a privileged class and enjoys

rights which no other citizens of the United States living under the same constitution and the same laws can assert. It is submitted that there is no authority for any such contention.

With respect to these and similar considerations which readily suggest themselves as having been taken into account by the legislature of Kansas when enacting the statute, the remarks of Mr. Justice Pitney in a recent case are applicable:

"Whether this or similar reasoning was employed we have no means of knowing; whether, if employed, it ought to have been accepted as convincing, is not for us to decide. It being incumbent upon the opponents of the law to demonstrate that it is clearly unreasonable and arbitrary, it is sufficient for us to declare, as we do, that such reasoning would be pertinent to the subject and not so unfounded or irrational as to permit us to say that the state, if it accepted it as a basis for changing the law in a matter so closely related to the public welfare, exceeded the restrictions placed upon its action by the fourteenth amendment."

Arizona Employers' Liability Cases, 250 U. S. 400, at p. 425.

This was said with reference to a statute imposing heavy burdens upon employers, but no one will contend that there is not an equally strong presumption in favor of sustaining a statute which restrains the acts of employees. We submit that it would be flying in the face of principle and authority alike to hold that, in the case at bar, the presumption is overcome, and we adopt, as summarizing our argument upon this branch of the case, the language used by two members of this court in a case decided only a few weeks ago:

"The history of the rules governing contests between employer and employed in the several English-speaking countries illustrates both the susceptibility of such rules to change and the variety of contemporary opinion as to what rules will best serve the public interest. The divergence of opinion in this difficult field of governmental action should admonish us not to declare a rule arbitrary or unreasonable merely because we are convinced that it is fraught with danger to the public weal, and thus to close the door to experiment within the law."

Brandeis, J., in *Truax v. Corrigan* (Dec. 19, 1921).

"There is nothing that I more deprecate than the use of the fourteenth amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an important part of the community desires, in the insulated chambers afforded by the several states, even though the experiments may seem futile or even noxious to me and to those whose judgment I respect."

Holmes, J., in *Truax v. Corrigan* (Dec. 19, 1921).

3. The Injunction May be Supported on the Power of the State to Regulate Industries Affected by a Public Use.

The act establishing the Court of Industrial Relations declares (section 3) that the several industries to which it applies—including, among others, the production of fuel—are "affected with a public interest and therefore subject to supervision by the state." Unless the court can say that it was not within the power of the state to declare that the production of fuel was affected with a public interest, it was clearly competent for the state to prohibit strikes as an incident of the power to regulate industries so affected. *Wilson v. New*, 243 U. S. 332, so fully covers this point that we adopt, as a statement of the pertinent principles, the following passages from the opinions in that case. The court was speaking with immediate reference to the power of congress to regulate interstate commerce, but the power of the states to regulate intrastate industries is at least as great.

"There would seem to be no ground for disputing the power which was exercised in the act which is before us so as to prescribe by law for the absence of a standard of wages caused by the failure to exercise the private right as a result of the dispute between the parties; that is, to exert the legislative will for the purpose of settling the dispute and bind both parties to the duty of acceptance and compliance, to the end that no individual dispute or difference might bring ruin to the vast interests concerned in the movement of interstate commerce, for the express purpose of protecting and preserving which the plenary legislative authority granted to congress was reposed."

White, C. J., 243 U. S., at p. 350.

"What benefits would flow to society by recognizing the right, because of the public interest, to regulate the relation of employer and employee and of the employees among themselves and to give to the latter peculiar and special rights safeguarding their persons, protecting them in case of accident and giving efficient remedies for that purpose, if there was no power to remedy a situation created by a dispute between employers and employees as to rate of wages, which if not remedied would leave the public helpless, the whole people ruined and all the homes of the land submitted to a danger of the most serious character?"

White, C. J., 243 U. S., at p. 351.

"Whatever would be the right of an employee engaged in a private business to demand such wages as he desires, to leave the employment if he does not get them and by concert of action to agree with others to leave upon the same condition, such rights are necessarily subject to limitation when employment is accepted in a business

charged with a public interest and as to which the power to regulate commerce possessed by congress applied, and the resulting right to fix in case of disagreement and dispute a standard of wages as we have seen necessarily obtained."

White, C. J., 243 U. S., at p. 352.

"There is no question here of purely private right, since the law is concerned only with those who are engaged in a business charged with a public interest, where the subject dealt with as to all the parties is one involved in that business, and which we have seen comes under the control of the right to regulate to the extent that the power to do so is appropriate or relevant to the business regulated."

White, C. J., 243 U. S., at p. 353.

"When one enters into interstate commerce one enters into a service in which the public has an interest and subjects one's self to its behests. And this is no limitation of liberty; it is the consequence of liberty exercised, the obligation of his undertaking, and constrains no more than any contract constrains. The obligation of a contract is the law under which it is made, and submission to regulation is the condition which attaches to one who enters into or accepts employment in a business in which the public has an interest."

McKenna, J., 243 U. S., at p. 364.

"If congress may fix wages of trainmen in interstate commerce during a term of months, it may do so during a term of years, or indefinitely. If it may increase wages, much more certainly it may reduce them. If it may establish a minimum it may establish a maximum. If it may impose its arbitral award upon the parties in a dispute about wages, it may do the same in the event of a dispute between the railroads and the coal miners, the car builders, or the producers of any other commodity essential to the proper movement of traffic."

Pitney, J., 243 U. S., at p. 387.

"Considering the doctrine now affirmed by a majority of the court as established, it follows as of course that congress has power to fix a maximum as well as a minimum wage for trainmen; to require compulsory arbitration of labor disputes which may seriously and directly jeopardize the movement of interstate traffic; and to take measures effectively to protect the free flow of such commerce against any combination, whether of operatives, owners or strangers."

McReynolds, J., 243 U. S. at p. 389.

It is equally plain that the court cannot say that the legislature of Kansas could not properly declare the business of coal mining affected with a public interest.

"The attitude of this court towards state legislation purporting to be passed in the public interest, and so declared to be by the decision of the court of last resort of the state passing the act, has often been declared. While the ultimate authority to determine the validity of legislation under the fourteenth amendment is rested in this court, local conditions are of such varying character that what is or is not a public use in a particular state is manifestly a matter respecting which local authority, legislative and judicial, has peculiar facilities for securing accurate information. In that view the judgment of the highest court of the state upon what should be deemed a public use in a particular state is entitled to the highest respect."

Day, J., in *Jones v. Portland*, 245 U. S. 217, at p. 221.

The case last cited is directly in point, as the decision was to the effect that a municipal fuel yard is a public use. It is, indeed, hard to think of an industry in the uninterrupted and efficient operation of which the public are more directly concerned than in the supply of fuel, and this public interest has often been recognized by the court.

Wallis v. Midland Carbon Co., 254 U. S. 300.

Lower Vein Coal Co. v. Industrial Board of Indiana, 255 U. S. 144.

A statute of Indiana created a commission to regulate the business of mining and selling coal and authorized the commission to fix prices for the sale of coal and to require coal producers to furnish coal for domestic use in the state. On an application for an injunction against the enforcement of the act, heard by three judges, it was held valid.

American Coal & Mining Co. v. Special Coal, etc., Commission of Indiana, 268 Fed. R. 563.

See, also:

State v. Barrett, 172 Ind. 169-179; 87 N. E. 7, 11.

Rail & River Coal Co. v. Yaple, 236 U. S. 338; affirming, 214 Fed. Rep. 273.

Green v. Frazier, 253 U. S. 233; 64 L. Ed. 78.

It has recently been held by this court that it cannot go behind the declaration of the legislature that the business of letting dwelling houses is affected with a public interest. It is impossible to say that a like declaration as to coal mining is not conclusive.

Block v. Hirsh, 256 U. S. —— (April 18, 1921).

Marcus Brown Holding Company v. Feldman, 256 U. S. —— (April 18, 1921).

Mount Vernon-Woodberry Cotton Duck Company v. Alabama Interstate Power Company, 240 U. S. 30.

German Alliance Ins. Co. v. Kansas, 233 U. S. 389.
Noble State Bank v. Haskell, 219 U. S. 104.
Brass v. Stoesser, 153 U. S. 391.
Budd v. New York, 143 U. S. 517.
Munn v. Illinois, 94 U. S. 113.

The court has held that a state may deem gold mining affected with a public interest, and so may confer upon the proprietors of gold mines the power of eminent domain.

Strickley v. Highland Boy Gold Mining Co., 200 U. S. 527.

The fact that the industry involved was affected with a public use, therefore, justifies the statute now in question regardless of the power of the states to forbid strikes generally.

The public interest which forbids the soldier to desert, the sailor to mutiny, the juror to leave the box is as a rule slight as compared with the interest of a whole state in an adequate supply of coal, and the Court must justify any proper exercise of public power.

4. The Statute Provides a Complete Substitute for the Strike as a Legitimate Means of Promoting the Interests of Employees.

The general theory of the statute is that in case of a trade dispute endangering the regular operation of any industry affected with a public use the parties shall submit the controversy to an impartial tribunal and shall govern themselves by its award. The machinery established by the act is ample to insure decisions based upon the fullest information, and, as nearly as is possible in human institutions, justice to all parties, and also to require compliance with those decisions when made. The parties to an industrial dispute can thus obtain, through the agencies provided by the act, whatever they are justly entitled to; the act, that is to say, gives them everything that they could get through the crude methods of industrial warfare, except as they might thereby gain at times some unconscionable advantage at the expense of one another or at the expense of the public. It will hardly be contended that there is, on any theory, any constitutional right to strike for this latter purpose. If, therefore, it is essential to the validity of a law forbidding strikes that there be substituted some other method whereby employees can exert pressure upon their employer to secure better wages, hours or working conditions, the present act meets the test. The act goes, in fact, only a little beyond the provisions of transportation act of 1920, sections 300-316 (ch. 91, 41 Stat. 456), for the adjustment of disputes between carriers and their employees, and is

not different in substance from the acts which have for a long time been in force in the British dominions, and are cited at length in the recent case of *Truax v. Corrigan* by Mr. Justice Brandeis, who there alludes to the similarity between the Kansas statute and the statutes of Australia and New Zealand.

The present case in this aspect, therefore, comes down to this: Can this court say that a system of settling industrial disputes which has long been carried on successfully in countries whose common-law traditions are the same as ours, and whose institutions are, if anything, even more democratic, so grossly and palpably violates the federal constitution that a state legislature cannot find its establishment is vital to the public good, but must permit the incalculable damage to the public welfare which inevitably results from the absence of such a system to go unchecked? To this question, we submit, there can be only one answer.

IV.

THE STRIKE ATTACKED THE CONSTITUTIONAL RIGHTS OF THE FUEL COMPANY AND ITS CUSTOMERS.

The George K. Mackie Fuel Company and its customers had the constitutional right to do business. This right was assailed and its enjoyment was injured by the strike.

Both individuals and corporations have a constitutional right to do business.

Breeze v. People of the State of Michigan, 241 U. S. 340; 60 L. Ed. 1034.

Adams v. Tanner, 244 U. S. 590; 61 L. Ed. 1336; L. R. A. 1917 F, 163.

Beecham v. Worley, 245 U. S. 60; 62 L. Ed. 149; L. R. A. 1918 C, 210; Anno. Cases 1918 A. 1201.

People v. Rosenburg, 112 N. Y. S. 316; 59 Misc. R. 342.

Baldwin v. Escanaba Liquor Dealers Assn., 165 Mich. 98; 130 N. W. 214, 220.

So men have a constitutional right to work.

Truax v. Raich, 239 U. S. 33; 60 L. Ed. 131; L. R. A. 1916 D, 545; Anno. Cases 1917 B, 283.

Bogni v. Perotti, 224 Mass. 152; 112 N. E. 853.

State v. City of Sheridan, 25 Wyo. 347; 170 Pac. 1, 3.

These elementary rights were infringed by the strike. The fuel company for a time was prevented from operating its two mines, and every person dependent upon those mines for a supply of

fuel was interfered with in the prosecution of his business. People whose work was dependent upon this supply of fuel were also injured.

Section 1 of the bill of rights of the constitution of Kansas is as follows:

"All men are possessed of equal and inalienable natural rights, among which are life, liberty and the pursuit of happiness."

Carrying out this provision of its constitution it was the duty of the state to protect life, liberty and the pursuit of happiness of its people against interference or deprivation by means of strikes in essential industries.

V.

THERE HAS BEEN NO VIOLATION OF ANY LIBERTY OF THE PLAINTIFFS IN ERROR.

Howat and his associates were not employees of the George K. Mackie Fuel Company. In calling the strike they acted as officers of District No. 14, United Mine Workers of America, which had many thousands of members who were coal miners. The purpose of the strike was to temporarily withdraw from work in the two mines of the fuel company the miners there employed until by the injuries inflicted upon the persons who were ordinarily served with coal from those two mines and upon the fuel company, it would be compelled to comply with the demands of the officers of District No. 14 calling the strike, and to pay the sum of about $225 to Karl Mishmash. Thereupon, under the plan, the workers in the mines would return to their employment. Those workers did not exercise an option to quit their employment. They stopped their work for a time in the mines in order to enable District No. 14, through its officers, to punish the fuel company and its customers so much that the fuel company would surrender to the demands of those calling the strike.

The strike was called by the vote of certain members of District 14, including the plaintiffs in error. (Tr. 47, 49, 50, 53, 54, 55, 58, 59, 61, 68, 71.) The employees in mines J and H of the fuel company obeyed the strike order and stopped work. (Tr. 32, 33, 42-45.) The strike was called to force the payment of the claim of Mishmash. (Tr. 49, 50, 53, 121, 126, 127 and 131.) The strike orders served upon the employees at both mines were identical. (Tr. 53.) A copy of this strike order appears at pages 59 and 50 of the tran-

script. The men were ordered to cease work beginning Friday morning, February 4, 1921, until such time as the company paid Mishmash the money in controversy. (Tr. 49.)

While the strike was in effect the employees returned to the mines on February 9 and cleaned up the coal which they had already mined, and then again abandoned the work until the close of the strike. (Tr. 28, 29, 33, 34, 39, 43.)

The clean-up enabled the men to be paid for the coal which they had mined and which was worked out in the clean-up. (Tr. 38.) Although it does not appear in the record, the men returned to their work about three weeks after February 4. Mishmash was not in the employ of the fuel company when the strike was called and had not been for some time. (Tr. 37, 38.)

If Mishmash had a valid claim against the fuel company he could have recovered judgment upon it in a court of the state. Such a method was not pursued, and was tabooed by District No. 14, which did not recognize a court as a fit tribunal to pass upon the claim. (Tr. 123-128.)

If strikes may be called on any such ground it would not be practicable nor safe for any company to operate a coal mine. The result would be the destruction of the coal-mining industry. To call such a performance an exercise of liberty is a perversion of language. It was not an exercise of liberty, but was a malignant oppression, the result of which, in addition to stopping the operation of the two coal mines in question and injuring the fuel company, tended to cripple or stop other industries dependent thereupon, throw people out of work, deprive business places and households of their coal supply and cause sickness and deaths from lack of necessary fuel. Under like pretext the water and food supplies of cities could be cut off, and in fact sometimes have been attempted to be cut off. The calling of the strike was in deliberate and cynical defiance of the injunction of the court and the execution of the laws of the state. It was part of a scheme of Howat and his associates to subjugate the coal operators and their customers and to wreck the functioning of the state government. No liberty of contract can properly be invoked to support this evil-doing. In this matter, as in other matters of harm to the public welfare, the statute must prevail against any theory of liberty of contract.

State v. Smiley, 196 U. S. 447, 49 L. Ed. 546.

Manigault v. Ward Co., 199 U. S. 473, 50 L. Ed. 274.

Grand Trunk W. R. R. Co. v. Railroad Commissioners of Indiana, 221 U. S. 400, 55 L. Ed. 786.

Central Lumber Co. v. South Dakota, 226 U. S. 156; 57 L. Ed. 164, 170.

National Safety Deposit Co. v. Stead, 232 U. S. 58, 58 L. Ed. 504, 511.

German Alliance Insurance Co. v. Lewis, 233 U. S. 389, 58 L. Ed. 1011.

New York Central R. R. Co. v. White, 243 U. S. 188, 61 L. Ed. 667.

Wilson v. New, 243 U. S. 332, 61 L. Ed. 755.

Middleton v. Texas Power & Light Co., 249 U. S. 152, 63 L. Ed. 527, 534.

Marcus Brown Holding Co. v. Feldman, 256 U. S. ——, 41 U. S. Sup. Ct. Rep. 465.

VI.

THERE HAS BEEN NO DENIAL OF THE EQUAL PROTECTION OF THE LAW.

The statute enumerates several industries and declares they are affected with a public interest and subject to supervision by the state. Among these industries is the mining and production of fuel. (Sec. 3, *id.*) There is at least some reasonable ground for this. There being a reasonable ground for the classification, it should be upheld.

State v. Smiley, 196 U. S. 447; 49 L. Ed. 546.

Ohio v. Dollison, 194 U. S. 445; 48 L. Ed. 1062, 1065.

Wilmington Star Mining Co. v. Fulton, 205 U. S. 60; 51 L. Ed. 708.

Williams v. Walsh, 222 U. S. 415; 56 L. Ed. 253, 255.

"The equality clause of the fourteenth amendment does not forbid a state legislature to distinguish, select and classify the objects of legislation, or to arrange persons, classes, property, trades or professions in different categories, with reference to the imposition of burdens or taxes upon them or the restriction or regulation of their business, provided the laws bear equally and alike upon all those actually or properly within the same class, and provided that the system of classification is not arbitrary or capricious, but rests on some reasonable and substantial ground of distinction growing out of public policy or prevalent economic or social conditions or the diverse nature of the trades or forms of business affected, and having some real relation to the object sought to be accomplished."

Black's Constitutional Law, 3d ed., p. 550.

VII.

THE COURT OF INDUSTRIAL RELATIONS IS A VALID ADMINISTRATIVE BODY.

The court of Industrial Relations is an administrative body with the right to make rules, and its findings and orders are subject to review by the supreme court. Its power to make rules is specified in section 5 of the statute, chapter 29, Laws of Kansas, 1920. The method of its proceedings is pointed out in sections 4-10, 14, 16, 20-24. It may conduct investigations, hear controversies between employers and employees, make findings and orders, and in some instances take active charge of the operation of an industry. Its actions are subject to the review and judgment of the supreme court of the state. (Section 12 and 13 of the act.)

The statute is carefully planned to afford a peaceful means of determining labor controversies, which will avoid the serious evils which so often arise from them and which did arise from the misconduct of District No. 14 and some of its officers. The purpose is to obtain decisions which will have a just regard for the rights and interests of all parties affected by the controversies. It is designed to abolish an intolerable nuisance in the calling of a multitude of wanton strikes in the coal industry and to insure just dealings between employees and employers in that industry and in others covered by the statute. The execution of the statute has been in harmony with this purpose.

The creation of such administrative boards has been upheld.

State v. Mo. Pac. Ry. Co., 76 Kan. 467, 481.

Coleman v. Newby, 7 Kan. 82, 90.

Stone v. Farmers Loan & Trust Co., 116 U. S. 307; 29 L. Ed. 636.

Field v. Clark, 143 U. S. 649, 680-694.

Reagan v. Farmers Loan & Trust Company, 154 U. S. 362; 38 L. Ed. 1014.

Buttfield v. Stranahan, 192 U. S. 470, 496; 48 L. Ed. 525.

Plymouth Coal Co. v. Pa., 232 U. S. 531; 58 L. Ed. 713, 718, 719.

Jeffrey Manufacturing Co. v. Blagg, 235 U. S. 571, 578; 59 L. Ed. 364.

Mutual Film Corporation v. Ohio Industrial Commission, 236 U. S. 230, 245, 246, 247; 59 L. Ed. 552; Ann. Cases 1916 C. 296.

There is no vesting of judicial power in the Court of Industrial Relations, and if there were it would not be in violation of any provision of the federal constitution.

Consolidated Rendering Co. v. Vermont, 207 U. S. 541; 52 L. Ed. 327, 335.

VIII.

IF ANY PROVISIONS OF THE STATUTE OTHER THAN THOSE MAKING A STRIKE UNLAWFUL SHOULD BE INVALID IT WOULD NOT AFFECT THE VALIDITY OF THE STRIKE PROVISION.

Section 28 of the statute is as follows:

"If any section or provision of this act shall be found invalid by any court it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section or provision, and the act as a whole shall not be declared invalid by reason of the fact that one or more sections or provisions may be found to be invalid by any court."

The Kansas supreme court has applied this section and held that the invalidity of one provision in the statute would not affect another provision. There have been similar holdings by this court.

Ohio Tax Cases, 232 U. S. 576; 58 L. Ed. 737, 746.

Where it is evident the legislature did not intend the operation of one provision to be contingent upon the operation of another, the invalidity of one will not affect the other.

Rainey v. U. S., 232 U. S. 310; 58 L. Ed. 617.

IX.

THE KANSAS COURT OF INDUSTRIAL RELATIONS ACT IS NOT IN CONFLICT WITH THE CLAYTON ACT OR THE LEVER ACT.

Section 20, chapter 323, act of October 15, 1914, 28 Stat. 738, known as the Clayton act, and which appears as section 1243, *id.*, U. S. Compiled Stat. 1918, Compact Edition, provides that:

"No restraining order or injunction shall be granted by any court of the United States or judges thereof in any case between an employer and employees, or between employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right of the party making the application, for which there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney," etc.

The prohibition is against the granting of a restraining order or an injunction in certain cases by any court of the United States or the judges thereof. It does not and could not apply to the action of any state court or board.

The Lever act of August 10, 1917, chapter 53, 40 Stat. 276, is entitled:

"An act to provide further for the national security and defense by encouraging the production, conserving the supply and controlling the distribution of food production and fuel."

The brief of opposing counsel does not point out in what particular the Kansas statute is in conflict with the Lever act, or how the enforcement of the Kansas statute would interfere with the enforcement of the Lever act. There was no showing in the record of any conflict.

Section 9 of the Lever act, quoted in the opposing brief, was repealed by the amendment to that act of October 22, 1919, chapter 80, 41 Stat., sec. 3. Both sections 8 and 9 of the original act were thus repealed by section 3 of the later act.

By the amendment to section 4 of the act, contained in section 2, chapter 80, act of October 22, 1919, *id.*, it was provided that "any person violating any of the provisions of this section, upon conviction thereof, shall be fined not exceeding five thousand dollars or by imprisonment for not more than two years, or both." Subdivision *d* of section 4 of the original act, as amended, made it unlawful for any person "to conspire, combine, agree, arrange with any other person, (*a*) to limit the facilities for transporting, producing, harvesting, manufacturing, supplying, storing or dealing in any necessaries; (*b*) to restrict the supply of any necessaries, . . . or to aid or abet the doing of any act made unlawful by this section." This amended section has been held invalid. *United States v. Cohen Grocery Co.*, 25 U. S. 81. It is well settled that the United States and the state may each prosecute and punish the same acts which each denounces as crimes.

The hostilities ceased November 11, 1918. The refusal of certain plaintiffs in error to appear and testify as witnesses before the Court of Industrial Relations occurred in April, 1920, and the strike at the mines of the George K. Mackie Fuel Company occurred in February, 1921. What, if anything, was being done in the execution of the Lever act in April, 1920, and February, 1921, does not appear in the record.

It could not have been the intention of congress to annul for the time being the statutes of states which tended to attain the same end which the Lever act was planned to attain. Such a construction would impair the national security and defense by lessening the

help of the states in encouraging the production, conserving the supply and controlling the distribution of food products and fuel. In every war in which the United States has been engaged the assistance of the states has been obtained by the federal government in the prosecution of the war, and this assistance was furnished and received during the war with Germany.

The Lever act shows by its terms that state coöperation was desired.

Section 2 provides:

"That in carrying out the purposes of this act the president is authorized to enter into any voluntary arrangements or agreements, to create and use any agency or agencies, to accept the services of any person without compensation, to coöperate with any agency or person, to utilize any department or agency of the government, and to coördinate their activities so as to avoid any preventable loss or duplication of efforts or funds."

The desire to obtain state coöperation was shown in another act passed on the same date entitled, "An act to provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products."

Chapter 52, act of August 10, 1897, 40 Stat. at L. 273.

In this act it was provided:

"That the Secretary of Agriculture is authorized to coöperate with such state and local officials, and with such public and private agencies or persons as he finds necessary, and to make such rules and regulations as are necessary effectively to carry out the preceding sections of this act."

Sec. 4, chap. 52, 40 Stat. at L. 274.

In the mining of coal there could not have been any conflict between the state statute and the Lever act during active hostilities. The purpose of each was to insure an adequate output of coal. Adequate production of coal for uses in the state of Kansas sustained the national security and defense, aided the successful prosecution of the war and assisted in the support and maintenance of the army and navy. These were the purposes of the Lever act. To annul the operation of the state statute would tend to defeat the purposes of the Lever act. After the cessation of hostilities there could not have been any conflict.

Carey v. South Dakota, 250 U. S. 118, 122; 63 L. Ed. 886.

No. 154.

X.

IT WAS NOT REQUISITE THAT PLAINTIFFS IN ERROR SHOULD HAVE HAD NOTICE OF THE APPLICATION FOR THE ORDER DIRECTING THEM TO APPEAR AS WITNESSES.

The application for the order for the plaintiffs in error to appear as witnesses before the Court of Industrial Relations at Pittsburg appears at pages 1 to 3 of the transcript, and the order of the district court of Crawford county appears at page 5 of the transcript. It required the persons named "to appear before the Court of Industrial Relations in the district court room at Pittsburg, Kan., forthwith, then and there to give their testimony and to answer all interrogatories which may be propounded to them concerning the controversy, proceeding and investigation now pending and being held by said Court of Industrial Relations." Messrs. Howat, Dorchy, Harvey and Foster were served with this order and refused to appear in compliance therewith. When he was served with the order by the undersheriff, L. M. Gould, "Mr. Howat said he didn't believe he would come until he had to." (Tr. 50.) This statement was made in the presence of Messrs. Dorchy, Harvey and Foster. (Tr. 51.) Mr. G. B. Boyd, who was present, testified, "I went up there with Mr. Gould when he served it and I asked Mr. Howat if he had anything to say about it, and he just said that this didn't change his program and that they wouldn't come unless they took them." This referred to the order. (Tr. 51, 52.)

After the order of the district court was deliberately disobeyed an affidavit charging Howat, Dorchy, Harvey and Foster with contempt of court was filed (tr. 6), and also an accusation charging contempt (tr. 9). The court then issued an order for attachment for the four persons and a writ of attachment (tr. 11, 12). They were served with the writ and an answer was filed on their behalf (tr. 13). A trial was had of the accusation, the defendants being present. Evidence was introduced by both sides and the court rendered its judgment, finding Howat, Dorchy, Harvey and Foster guilty of contempt, and sentencing them accordingly (tr. 23-25). A motion for a new trial was filed on behalf of defendants (tr. 25, 26) and was overruled (tr. 26).

The four defendants below, plaintiffs in error, had a full and ample trial with every opportunity for a hearing of their defense. They suffered no injury whatever by lack of notice of the applica-

tion for the order of the district court requiring them to appear and testify as witnesses before the Court of Industrial Relations. When the order was issued they were not defendants in the case. An effort was being made to have them appear as witnesses in an investigation before the Court of Industrial Relations. The order was a substitute for a subpœna. A subpœna is always on an *ex parte* application, and the same reasons which permit such issuance permitted the order of the district court on an *ex parte* application. No rights of the plaintiffs in error were infringed when the order was made. They would be required to suffer no burden thereby other than that imposed upon all witnesses to appear and testify. There was no infringement of their rights because they were treated as witnesses and not as defendants at that stage of the proceeding. When the accusation was filed they were treated as defendants and then given notice and hearing. No notice of the application for the order was required.

The State v. Jack, 69 Kan. 387, 389.

People v. Kipley, 171 Ill. 44, 69; 41 L. R. A. 774, 775, 784.

In re Davies, 168 N. Y. 89, 113.

No. 154.

XI.

THE DISTRICT COURT OF CRAWFORD COUNTY, KANSAS, HAD JURISDICTION TO ISSUE ITS ORDER DIRECTING PLAINTIFFS IN ERROR TO APPEAR AND TESTIFY BEFORE THE COURT OF INDUSTRIAL RELATIONS.

Section 11 of chapter 29 of the Laws of Kansas, 1920, is as follows:

"Said Court of Industrial Relations may employ a competent clerk, marshal, shorthand reporter, and such expert accountants, engineers, stenographers, attorneys and other employees as may be necessary to conduct the business of said court; shall provide itself with a proper seal and shall have the power and authority to issue summons and subpœnas and compel the attendance of witnesses and parties, and to compel the production of the books, correspondence, files, records and accounts of any industry, employment, utility or common carrier, or of any person, corporation, association or union of employees affected, and to make any and all investigations necessary to ascertain the truth in regard to said controversy. In case any person shall fail or refuse to obey any summons or subpœna issued by said court after due service, then and in that event said court is hereby authorized and empowered to take proper proceedings in any court of competent

jurisdiction to compel obedience to such summons or subpœna. Employees of said court whose salaries are not fixed by law shall be paid such compensation as may be fixed by said court, with the approval of the governor.

It is provided in the constitution of Kansas "that the district courts shall have such jurisdiction in their respective districts as may be provided by law." (Section 6, article 3, constitution of Kansas.)

The statute as to district courts provides:

"There shall be in each county organized for judicial purposes a district court, which shall be a court of record, and shall have general original jurisdiction of all matters, both civil and criminal (not otherwise provided by law), and jurisdiction in cases of appeal and error from all inferior courts and tribunals, and shall have a general supervision and control of all such inferior courts and tribunals, to prevent and correct errors and abuses."

Section 2957, General Statutes of Kansas, 1915.

The procedure pointed out by the statutes in cases of indirect contempt is as follows:

"That upon the return of an officer on process or an affidavit duly filed showing any person guilty of indirect contempt, a writ of attachment or other lawful process may issue, and such person be arrested and brought before the court or judge in chambers; and thereupon a written accusation setting forth succintly and clearly the facts alleged to constitute such contempt shall be filed, and the accused required to answer the same, by an order which shall fix the time therefor and also the time and place for hearing the matter; and the court or the judge in chambers shall, on proper showing, extend the time so as to give the accused a reasonable opportunity to purge himself of such contempt. After the answer of the accused, or if he refuse or fail to answer, the court or judge may proceed at the time so fixed to hear and determine such accusation upon such testimony as shall be produced. If the accused answer, the trial shall proceed upon testimony produced as in criminal cases, and the accused shall be entitled to be confronted with the witnesses against him; but such trial shall be by the court or judge. If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment."

Section 3107, General Statutes of Kansas, 1915.

There is also a statute concerning contempt proceedings in cases of injunctions (section 7158, *id.*), which is not involved on this point.

A court has power to protect itself either against direct or indirect contempt, independently of statute.

The procedure for the punishment of contempt in refusing to obey the order of the court to appear and testify as witnesses before the Court of Industrial Relations followed section 3107, *et*

The Kansas supreme court has held in this case, No. 154, that the proceedings in the making of the order upon the plaintiffs in error to appear and testify as witnesses complied with the statutory authority. That court's construction of the statutes should be followed here.

The district court is a court of general original jurisdiction. The plaintiffs in error were subpœnaed by the Court of Industrial Relations in Crawford county to appear before that court in the same county, and they refused to appear. The district court was the court under the Kansas statutes in which the proceedings on behalf of the Court of Industrial Relations should have been taken to enforce compliance with its subpœna. Under the statute it had general original jurisdiction of all matters, both civil and criminal, not otherwise provided by law. The other courts in the state are the supreme court, the probate court and certain city courts and justices of the peace. The district court is the ordinary court of original jurisdiction and the one in which it was appropriate for an application to be made to compel the desired witnesses to appear and testify. These persons were not parties to a suit, and the procedure applicable to parties should not have been followed prior to the filing of the contempt accusations. Before that time they were and should have been dealt with as persons desired as witnesses, and the methods applicable to procuring the appearance of witnesses were properly followed. The order of the district court, issued in lieu of a subpœna, requiring these persons to appear and testify before the Court of Industrial Relations, was a proper and useful preliminary to contempt proceedings. It gave the plaintiffs in error further time and opportunity in which to respond to the direction that they appear and testify, which direction was originally contained in the subpœnas issued by the Court of Industrial Relations. The repetition of this order by the district court gave the plaintiffs in error time to reflect and to obey. If the plaintiffs in error had desired they could have thereupon appeared in the district court and raised any questions they desired against the enforcement of the order with relation to the authority of the court. This they did not do. Their course was one of defiance to the law, to the Court of Industrial Relations and to the district court. They were given ample opportunity to comply with the

subpœnas and then with the order of the district court, which took the place of the subpœnas and was incidental to effecting a compliance with them. The procedure afforded them every facility for a defense, and they have no ground of complaint.

The judgment in each case enforced the laws and protected the interests of the people of the state of Kansas, which had been wantonly and defiantly attacked. There has been no violation of any rights of the plaintiffs in error under the provisions referred to in the federal constitution.

Respectfully submitted,

RICHARD J. HOPKINS,
Attorney-general of the State of Kansas,
JOHN G. EGAN,
Asst. Attorney-general of the State of Kansas,
BAXTER D. McCLAIN,
MOORFIELD STOREY,
HAROLD S. DAVIS,
Attorneys for the State of Kansas.

Office Supreme Court
FILED
DEC 19 192
WM. R. STANS
CL

No. 491.
(October term, 1921.)

In the Supreme Court of the United States.

ALEXANDER HOWAT AND AUGUST DORCHY,
Plaintiffs in Error,
vs.
THE STATE OF KANSAS, *Defendant in Error.*

MOTION TO ADVANCE.
MOTION TO CONSOLIDATE.
NOTICE OF MOTIONS.
AFFIDAVIT OF SERVICE.

RICHARD J. HOPKINS,
Attorney-general for the State of Kansas.
MOORFIELD STOREY,
BAXTER D. McCLAIN,
Solicitors for the Defendant in Error.

TOPEKA, KAN.

9-1790

In the Supreme Court of the United States.

ALEXANDER HOWAT AND AUGUST DORCHY,
Plaintiffs in Error,

vs.

THE STATE OF KANSAS, *Defendant in Error.*

No. 491.
(October term, 1921.)

In Error to the Supreme Court of the State of Kansas.

NOTICE.

To: Alexander Howat and August Dorchy, plaintiffs in error, and Redmond S. Brennan and Phil Callery, solicitors for the plaintiffs in error:

You are hereby notified that the defendant in error has filed in the above-entitled action its motions to advance the hearing of said cause and to consolidate this cause with action number 154, October term, 1921, Alexander Howat *et al.*, plaintiffs in error, *vs.* State of Kansas, defendant in error, copies of which motions to advance and to consolidate actions are hereto attached, and that said motions to advance and consolidate will be submitted to said court on the 19th day of December, 1921.

RICHARD J. HOPKINS,
Attorney-general for the State of Kansas.
MOORFIELD STOREY,
BAXTER D. McCLAIN,
Solicitors for the Defendant in Error.

Due and regular service of the above and foregoing notice, with copies of motion attached, is hereby acknowledged to have been made upon the undersigned, solicitor for the plaintiffs in error, this ——— day of December, 1921.

Solicitor for the Plaintiffs in Error.

(FACE SIDE)

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

145622

Registered Article
No. 24576

Return to COURT OF IND
(Name of Sender)

Street and Number
of Post Office Box RELATIONS

TOPEKA,
KANSAS.

(REVERSE SIDE)

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

(Signed) REDMOND S. BRENNAN
(Signature or name of addressee)

(Signature of addressee's agent.)

Date of delivery DEC. 3, 1921

AFFIDAVIT OF SERVICE.

STATE OF KANSAS, SHAWNEE COUNTY, ss.

Baxter D. McClain, being first duly sworn, on his oath states:

That he is one of the solicitors for the defendant in error in the above-entitled action; and that on the 2d day of December, 1921, he made service of the above and foregoing notice of motions to advance and to consolidate actions by depositing in the United States mail at Topeka, Kansas, a full, true and correct copy of the above notice, with copies of motions therein described attached thereto, together with brief of the defendant in error upon said motion to advance, with postage prepaid, addressed to Redmond S. Brennan, solicitor for the plaintiffs in error, at his postoffice address, 1218 Commerce Building, Kansas City, Missouri, such notice being sent by registered mail and a receipt therefor requested and obtained, which receipt is attached hereto; and that acknowledgment of service of said notice in writing requested by mail, telegraph and by telephone has not been obtained.

BAXTER D. McCLAIN.

Subscribed and sworn to before me this 12th day of December, 1921.

WILL F. WILKERSON, *Notary Public.*

My commission expires April 17, 1923.

(Seal.)

5. The state claims that in this case there is no Federal question, because while the main controversy is still pending in the supreme court of Kansas the defendant has violated an injunction issued in that court and is properly punished by the state court for contempt. The plaintiffs in error claim that the case presents the question whether the statute under which these proceedings have been taken is constitutional.

6. The state represents that the administration of that law has been greatly hampered by the conduct and attitude of the officers of District No. 14 aforesaid; that such officers, including the plaintiffs in error, have claimed that said law and all its provisions are unconstitutional and void in that the right to strike is denied to working men in all industries; that the district officers and board of such organization have been and are now agitating and urging the utter disregard and disobedience of said law, although the supreme court of the state of Kansas has passed upon two appeals of the said Howat, in each instance affirming judgments of conviction; notwithstanding that a third appeal is now pending and submitted, and notwithstanding that other decisions of the supreme court of the state of Kansas affirm other features of the industrial court act, and that in so far as the Kansas courts are concerned said law has been upheld in all its provisions, such officers and their sympathizers have continuously and are now openly defying the law and urging the members of said union and others to ignore the same and its administration, on the ground that the same violates the provisions of the constitution of the United States; and that the industrial population of Kansas is in a state of unrest largely caused by the agitation aforesaid, the attitude and conduct of the plaintiffs in error, and the uncertainty as to the constitutionality of the law created in the minds of certain classes of industrial workers. A large majority of the miners of such district are either aliens, naturalized citizens, or immediate descendants of foreigners, a large percentage of whom cannot speak the English language. Such aliens, naturalized citizens and descendants thereof, to a very large extent, are unacquainted and unfamiliar with American institutions and laws, and are peculiarly susceptible to the influence of their leaders. And the state urges to this court that it is imperative, for the maintenance of the public peace in the state of Kansas, that the questions involved in this appeal be determined with all possible speed.

7. One of the main questions which the plaintiffs in error raised in the supreme court of Kansas, and which was decided by that

court, is as to the right of the state to pass laws prohibiting the strike and directing the submission of industrial controversies to a tribunal created with express jurisdiction to settle and adjudicate such controversies, and providing means for the enforcement of the orders and findings of such tribunal. Throughout the United States at this time the question thus raised is being discussed and laws of a similar nature have been under consideration by various states, and such an act has been and is being urged upon the Congress of the United States. In the present condition of industrial unrest, and in view of the efforts of the Federal government to create an agency for the adjustment of these disputes in the form of a labor board, and in view of the public interest involved, the defendants in error respectfully submit that the question of the constitutionality of the law should be considered and determined by this court in this case at as early a date as the business and rules of the court will permit.

8. The state of Kansas respectfully submits to this honorable court that this case involves the general public interest; that it is important to the industrial interest of Kansas, as well as those of the nation generally, that this cause be advanced for early hearing, because until the questions raised by this appeal are finally determined by the highest court of the land the administration of the law in Kansas, not only concerning industrial controversies but other laws closely related thereto, will be involved in uncertainty and the unforcement thereof will consequently be more difficult.

The state of Kansas therefore respectfully requests that this cause be advanced for hearing and submission at as early a date as the convenience of the court will permit.

RICHARD J. HOPKINS,
Attorney-general of the State of Kansas.

MOORFIELD STOREY,
BAXTER D. McCLAIN,
Solicitors for Defendant in Error.

In the Supreme Court
of the United States.

ALEXANDER HOWAT AND AUGUST DORCHY,
Plaintiffs in Error,

vs.

STATE OF KANSAS, *Defendant in Error.*

No. 491.

(October Term, 1921.)

In Error to the Supreme Court of the State of Kansas.

MOTION TO CONSOLIDATE PROCEEDINGS IN ERROR.

Comes now the defendant in error, the state of Kansas, and moves the court to consolidate for hearing the above-entitled action with the cause number 154, October term, 1921, entitled Alexander Howat *et al*, plaintiffs in error, *vs.* The State of Kansas, defendant in error, same to be set for hearing at such time as the court may determine under the motion to advance filed in this case.

RICHARD J. HOPKINS,
Attorney-general for the State of Kansas.

MOORFIELD STOREY,
BAXTER D. McCLAIN,
Solicitors for the Defendant in Error.

TOPEKA, KAN.

9-1790

Office Supreme Court, U. S.
FILED
FEB 27 1922
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921

No. 491.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, ET AL., Plaintiffs in Error,

vs.

THE STATE OF KANSAS, Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

BRIEF OF PLAINTIFFS IN ERROR.

REDMOND S. BRENNAN,
Commerce Building,
Kansas City, Missouri;

JOHN F. McCARRON,
Woodward Building,
Washington, D. C.;

FRANK BONAR HEGARTY,
Commerce Building,
Kansas City, Missouri,

Attorneys for Plaintiffs in Error.

(28,446)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

No. 491.

ALEXANDER HOWAT, AUGUST DORCHY, THOMAS HARVEY, ET AL., Plaintiffs in Error,

vs.

THE STATE OF KANSAS, Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

BRIEF OF PLAINTIFFS IN ERROR.

STATEMENT.

The cause herein comes to this court on writ of error to the Supreme Court of Kansas.

In brief filed by plaintiffs in error in No. 154, consolidated with this cause by the court, attention is called to the enactment by the legislature of the State of Kansas of what is known as the Court of Industrial Relations Act, chapter 29, Special Session Laws of 1920, and said act is set forth in full

in the addendum of said brief as well as the amendment to it, Kansas Session Laws of 1921, which creates a Public Utilities Commission and transferring the administration of the act as to regulation of public utilities thereto.

Under date of September 14, 1920, a permanent injunction was issued by the District Court of Crawford County, Kansas, against the plaintiffs in error, enjoining them among other things from:

> (*a*) "Directing, ordering or in any manner bringing about the hindering, delaying, interference with or suspension of the operation of any coal mines in the counties of Crawford, Cherokee or Osage, in the State of Kansas * * *.
>
> (*b*) "for the purpose of preventing the operation of said coal mines with reasonable continuity and efficiency, and from, to any extent wilfully, hindering, delaying, limiting or suspending the continuous and efficient operation of said coal mines with the purpose or intent of evading the provisions of the laws of the State of Kansas, and particularly the act creating the Court of Industrial Relations of the State of Kansas, and defining its powers and duties, to wit, chapter 29 of the laws of the special session of the Legislature of the State of Kansas of 1920, and from violating any of the provisions of said law.
>
> (*c*) "from conspiring or confederating together or with each other to injure in any manner any person or persons or any corporation in his, their or its business, labor, enterprise or peace and security by boycott or discrimination or by picketing or advertising by propaganda or other means because of any action taken by such person or persons or corporations

under any order of said Court of Industrial Relations of the State of Kansas, or because of any action or proceedings instituted in said court or because any such person or persons or corporation shall have invoked the jurisdiction of said court in any manner provided for under the provisions of said law.

(*d*) "from wilfully causing any person, firm or corporation engaged in the production of coal in said counties in the State of Kansas, or the operation of said mines to limit or cease operations for the purpose of limiting production with the intent of avoiding any of the provisions of said law, but nothing in this order shall be construed as restraining or restricting the right of any individual employee engaged in the operation of said mines to quit his employment at any time, but said defendants and persons are hereby perpetually enjoined and restrained from conspiring with other persons to quit their employment for the purpose of hindering, delaying, interfering with, or suspending the operation of any of the said coal mines and from engaging in what is known as picketing or intimidating by threats, abuse or in any other manner any person or persons with intent to induce such person or persons to quit such employment or deter or prevent any other person or persons from accepting employment, or from remaining in the employ of any of the persons, firms or corporations operating the said coal mines in said counties described in the petition herein.

(*e*) "from using his or their official position and by such means intentionally influencing, impelling, or compelling any other persons to violate any of the provisions of said chapter 29 of the session laws of the special session of the Legislature of the State of Kansas for 1920" (Record, pp. 10, 11, 12, 13).

On February 7, 1921, the Attorney General of Kansas and county attorney of Crawford County, Kansas, filed an accusation in the District Court of Crawford County against plaintiffs in error, charging contempt of the injunction of the District Court of Crawford County, Kansas, issued September 14, 1920 (Record, pp. 13, 14, 15, 16).

The same day that the aforementioned accusation was filed, February 7, 1921, the District Court of Crawford County issued its order for an attachment against plaintiffs in error on a charge of contempt of the permanent injunction of the court, dated September 14, 1920,

> "by unlawfully causing the employees or members of Local Unions Nos. 498 and 310, to unlawfully strike and cease and quit their employment and work in coal mines owned and operated by the George K. Mackie Fuel Company, located near Roseland and Cherokee, in the counties of Crawford and Cherokee, respectively, in the State of Kansas, with the unlawful purpose of hindering, delaying, and interfering with the production of coal in the operation of the said mines" (Record, pp. 16, 17).

Writ of attachment issued for plaintiffs in error (Record, pp. 17, 18). Plaintiffs in error filed their answer to the accusation charging contempt which consists of 14 major premises as allowed by the Kansas Code, denying each and every allegation contained in the accusation of the Attorney General. Major premise 1 and paragraphs 1 to 11 of major premise 2 and major premises 3 to 14 inclusive, deny the valid existence of the Court of Industrial Relations under the constitution and laws of the State of Kansas, while paragraphs 11 to 17, inclusive of major premise 2 set up a viola-

tion of the Federal constitutional rights of the plaintiffs in error (Record, pp. 18-25).

Under date of February 15, 1921, the cause coming on to be heard the plaintiffs in error through counsel moved to quash the accusation charging contempt on the ground that the Court of Industrial Relations Act out of which said injunction issued is unconstitutional, null, and void. The plaintiffs in error called up their answer to the accusation of contempt and specifically called to the court's attention the several paragraphs therein relating to Interstate Commerce, the Lever Act, and to all of the paragraphs in said answer, and asked the court to render judgment in favor of the plaintiffs in error. The court overruled said motion which was duly excepted to by the plaintiffs in error (Record, pp. 26, 27). The defendant in error then introduced testimony of certain witnesses (Record, pp. 27 to 83, inclusive). The plaintiffs in error, at the conclusion of the testimony referred to, submitted to the District Court a request for findings of fact and conclusions of law (Record, pp. 83-86). The court declined to answer the interrogatories in said request and plaintiffs in error excepted (Record, p. 86).

Under date of February 16, 1921, the District Court of Crawford County, Kansas, rendered its decision (Record, pp. 86-90) adjudging plaintiffs in error in contempt and they were forthwith committed to jail for one year, and to pay the costs of prosecution in that, they, as members of the District Board of District No. 14, of the United Mine Workers, of which plaintiffs in error constituted a majority of the said District Board caused the suspension of the operation of the coal mines of the George K. Mackie Fuel Company for the purpose and intent of evading the provisions of chapter

29, Laws of Kansas, Special Session of 1920, which is the act establishing the Court of Industrial Relations of the State of Kansas. The court did not pass upon the Federal questions set forth by plaintiffs in error in their answer to the accusation of contempt (Record, pp. 86, 90).

Under date of February 15, 1921, plaintiffs in error made a motion for a new trial which was overruled by the court under date of February 16, 1921 (Record, pp. 90-91). Plaintiffs in error under date of February 16, 1921, gave notice of an appeal to the Supreme Court of Kansas from the judgment of the District Court of Crawford County, Kansas (Record, pp. 91-92). Specification of errors with abstract of record was filed by plaintiffs in error in the Supreme Court of Kansas (Record, pp. 93-94).

The cause was heard by said Supreme Court of Kansas, and the plaintiffs in error again pressed with earnestness their Federal constitutional rights before that court, both by oral argument and brief. On June 11, 1921, a decision was rendered by said Supreme Court affirming the decision of the lower court and sustaining the validity of the Court of Industrial Relations Act (Record, pp. 133-167). In said decision of the Supreme Court of the State of Kansas a number of Federal questions were passed upon adversely by said court, and it was also held that

> "The act creating the court of industrial relations is a reasonable and valid exercise of the police power of the State over the business of producing coal, and does not impair liberty of contract or permit involuntary servitude, contrary to the constitution of the United States" (Record, p. 134).

Under date of July 1, 1921 (Record, p. 187), petition for rehearing in said cause was filed in the Supreme Court of Kansas and said petition was denied on July 7, 1921 (Record, p. 188). Under date of July 7, 1921, petition for writ of error was filed (Record, p. 191). Assignment of errors was also filed on said date, again stressing Federal constitutional and statutory points in the Supreme Court of Kansas by plaintiffs in error, and on said date the Chief Justice of the Supreme Court signed an order allowing a writ of error from the Supreme Court of the United States (Record, p. 194).

SPECIFICATION OF ERRORS.

Plaintiffs in error claim herein as they did in case No. 154, consolidated with this cause by this court, that the Supreme Court of the State of Kansas erred in affirming the judgment of the District Court of Crawford County, Kansas in refusing to declare that chapter 29, Kansas Special Session Laws, 1920, is void, as against the rights and remedies of the plaintiffs in error, for the following reasons:

First. The District Court of Crawford County, Kansas, was without authority to issue an injunction in this cause as not within its jurisdiction and cannot punish a disregard of the injunction granted as a contempt as an injunction which is void because issued by a court without jurisdiction, may be treated as having no existence. Therefore the judgment of contempt is a denial of due process as guaranteed to plaintiffs in error by the 14th Amendment to the United States Constitution.

Second Said injunction enjoining plaintiffs in error under the act creating the court of industrial relations from doing certain things as therein set forth is in contravention of statutatory law of the United States and of the 13th and 14th Amendments to the United States Constitution as set forth in nine points in argument in plaintiffs in error's brief, filed in No. 154, consolidated with this cause and also more particularly specified in the assignment of errors herein (Tr. 191).

ARGUMENT.

Point 1.

The District Court of Crawford County was without jurisdiction to issue the injunction in this cause, and could not therefore punish a disregard of it as a contempt. An injunction which is void because issued by a court without jurisdiction, may be treated as having no existence and as a denial of due process under the 14th Amendment.

The District Court of Crawford County was without jurisdiction to issue an injunction based upon the provisions of the act creating the Court of Industrial Relations, as the provisions of the injunction are based upon a void statute and no authority is conferred under said statute or any other statute upon the District Court of Crawford County to enforce the provisions of the act creating the court of industrial relations.

In our statement of this case, we have set out excerpts showing that the injunction follows and adheres to the language of the Court of Industrial Relations law and attempts to enjoin full and faithful compliance with that law. Omit-

ting the language of the Court of Industrial Relations law and the words enjoining violations of that law from the injunction, leaves the injunction with nothing but a caption, preamble and signature. The general equity jurisdiction of the District Court need not be considered here. The injunction has its sole support upon the Industrial Court law, and that law confers no such authority upon the District Court of Crawford County.

A careful review of the proceedings shows that the injunction sought to enforce a void statute by compelling obedience to it in contravention of the Federal rights and guarantees of the plaintiffs in error.

Moreover, the Court of Industrial Relations law is unconstitutional and void as plaintiffs in error contend and as argued in our brief in case No. 154, consolidated with this case, and the injunction had no legal force or effect and there can be no contempt of a void order.

There can be no vindication of an authority exercised by a court without jurisdiction. To do so would make the enforcement of all laws a mockery. Nowhere is it shown that the act creating the Court of Industrial Relations confers upon the District Court of Crawford County jurisdiction of the subject-matter of the act. The injunction seeks to enforce the provisions of the act creating the court of industrial relations and is void because issued by a court without jurisdiction, and may be treated as having no existence. Therefore there can be no contempt of a void injunction.

State *v.* Voorhies, 37 La. Ann., 605.

Ex parte Fisk, 113 U. S., 713.

Brown *v.* Moore, 61 Cal., 432.

State *v.* Judge, 34 La. Ann., 741.

And a court or judge in granting an injunction is limit
in jurisdiction by the terms of the constitution or stat
conferring the power.

Jones v. City of Little Rock, 245 Ark., 284.
Smith v. Ellis, 29 Maine, 422.
Cooper v. City of Mineral Point, 34 Wis., 181.

We submit that the injunction was void in this case a
that therefore the contempt proceedings growing out of sa
are also void, and that such proceedings were a denial of d
process of law under the 14th Amendment.

ADDITIONAL POINTS IN BRIEF OF PLAINTIFFS I
ERROR IN No. 154, CONSOLIDATED WITH THIS CAUSE.

In addition to point 1 set out in this brief, we respectfu
call the court's attention to points 4, 5, 6, 7, 8, 9, 10, 11, a
12 set out in brief of plaintiffs in error in No. 154, c
solidated with this cause, and that the aforesaid points
also made in this case in connection with point 1 set out
page 8 of this brief.

CONCLUSION.

The plaintiffs in error respectfully submit that the Distr
Court of Crawford County, Kansas, was without jurisdicti
to issue the permanent injunction, as there is no author
conferred upon said District Court to enforce the provisio
of the Court of Industrial Relations Act and said Distr
Court cannot punish a disregard of the injunction grant
as a contempt, as it is void because issued by the court wi
out jurisdiction, it may be treated as having no existen

Punishing plaintiffs in error for a contempt is a denial of due process of law under the 14th Amendment.

Plaintiffs in error further submit in conclusion that on the specification of errors and other points hereinbefore set forth the action of the lower court should be reversed.

Very respectfully,

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HOWAT ET AL. *v.* STATE OF KANSAS.

ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

Nos. 154 and 491. Argued February 27, 28, 1922.—Decided March 13, 1922.

1. The constitutionality of a state statute presenting very important questions should not be decided unless the case before the court so requires. P. 184.
2. Whether the Kansas Industrial Relations Act (Laws 1920, c. 29), in providing in effect for compulsory arbitration of labor controversies in certain industries before an administrative body whose orders it makes reviewable and enforceable through the State Supreme Court, violates the Federal Constitution, is not determinable upon a review of a judgment of that court sustaining, as a separable feature of the act, the power it gives the administrative body to call witnesses to testify in a general investigation of indus-

trial conditions and the power of the State District Court, of general jurisdiction, to order their attendance and to enforce their obedience through contempt proceedings. P. 185.

3. An injunction issued by a court of general jurisdiction and equity powers upon proper pleadings, and served upon parties within the jurisdiction, must be obeyed, even if erroneous and based upon an invalid statute, until set aside by orderly review. P. 190.

4. Where a sentence imposed by the Kansas District Court for contempt in disobeying an injunction issued in a suit brought by the State to prevent execution of a conspiracy to cause a general strike and cessation of work in coal mines contrary to the state laws, including the Industrial Relations Act, *supra*, was affirmed by the State Supreme Court independently of that act (though its constitutionality was drawn in question) upon the ground that the District Court had general power to grant the injunction and that the validity of the injunction could not be questioned collaterally in the contempt proceeding, *held* that the judgment of affirmance, having a non-federal basis, was not reviewable by this court. P. 189.

Writs of error to review 107 Kans. 423; 109 Kans. 376, dismissed

WRITS of error to review two judgments of the Supreme Court of Kansas affirming sentences to confinement for contempt.

Mr. Redmond S. Brennan, with whom *Mr. John F. McCarron* and *Mr. Frank B. Hegerty* were on the briefs, for plaintiffs in error.

Mr. John G. Egan, Mr. Moorfield Storey and *Mr. F. Dumont Smith*, with whom *Mr. Richard J. Hopkins*, Attorney General of the State of Kansas, *Mr. Baxter D. McClain* and *Mr. Harold S. Davis* were on the briefs, for defendant in error.

MR. CHIEF JUSTICE TAFT delivered the opinion of the court.

These are two writs of error to the Supreme Court of Kansas sued out (§ 237, Judicial Code) with the hope and purpose of testing the validity, under the Federal Consti-

tution, of the act of the Legislature of Kansas creating a Court of Industrial Relations. C. 29, Special Session, Laws of Kansas of 1920.

In No. 154, the plaintiffs in error were defendants in proceedings taken in the District Court of Crawford County, Kansas, to compel them to attend and give testimony under subpoena before the Court of Industrial Relations. They had refused to appear. After arrest and a hearing, they were sentenced to confinement in jail until they should comply with the order. *State v. Howat,* 107 Kans. 423.

In No. 491, the plaintiffs in error were sentenced to imprisonment for a year as punishment for violation of an injunction issued by the same District Court forbidding them to call or cause a strike among the employees in certain coal mines in Crawford County. *State* v. *Howat,* 109 Kans. 376.

We are of opinion that in neither case is the Kansas Industrial Relations Act presented in such way as to permit us to pass upon those features which are attacked by the plaintiffs in error as violative of the Constitution of the United States.

The main purpose of the act is to create an administrative tribunal to arbitrate controversies between employers and employees in certain industrial, mining and transportation businesses which the act declares to be affected with such a public interest that their continuity is essential to the public peace, the public health and the proper living conditions and general welfare of the people. The board, miscalled a court, is given power to make investigations on its own initiative or upon complaint of interested persons to consider the wages, the return to capital, and the conditions surrounding the workers in any such employment and business, to summon all necessary parties in interest, to call and examine witnesses, and, after hearing, to make its findings and orders stating specifically

the terms and conditions, including wages, upon which such industry or employment shall be carried on in the future. In case the parties do not obey the orders the board is given authority to apply to the Supreme Court of Kansas to compel compliance, and the Supreme Court is authorized to review the orders upon the evidence already heard, and such other new evidence as that court shall permit, and enter and enforce a proper judgment. The board is also authorized, with the consent of the Governor, to make general investigations into industrial and economic conditions to familiarize itself with industrial problems as they may arise. In effect, the act provides for compulsory arbitration between labor and capital in certain industries and employment. It forbids an injunction against a workman or employee to prevent his quitting his employment. It is directed against strikes and lockouts and their declared wasteful and destructive effect, and conspiracies, picketing and intimidation to induce them. Obviously we should not pass upon the constitutional validity of an act presenting such critical and important issues unless the case before us requires it.

In No. 154, Howat and the other plaintiffs in error were subpoenaed to appear before the so-called Court of Industrial Relations to testify in an investigation into conditions existing in the mining industry in Cherokee and Crawford Counties. They failed to appear. The powers of the tribunal in such a case are set forth in § 11 of the act, reading in part as follows:

"Said Court . . . shall have the power and authority to issue summons and subpoenas and compel the attendance of witnesses and parties . . . and to make any and all investigations necessary to ascertain the truth in regard to said controversy. In case any person shall fail or refuse to obey any summons or subpoena issued by said court after due service then and in that event said court is hereby authorized and empowered to take proper

proceedings in any court of competent jurisdiction to compel obedience to such summons or subpoena."

Under this section, the board made application to the District Court of Crawford County, the court of first instance of general jurisdiction in that county, to issue an order directing the plaintiffs in error to attend the board and testify. This order was issued, duly served and disobeyed. The contemnors were then brought into court by attachment. Their plea that the legislation under which they were subpoenaed was void was held to be insufficient and they were committed to jail until they should comply with the subpoena. The contemnors appealed to the Supreme Court of the State, which affirmed the action of the District Court, holding that, without regard to the validity of the particular provisions of the Industrial Relations Act of which they complained, they were under legal obligation to obey the subpoena and were in contempt for not doing so. The court invited attention to § 28 of the act, which provides that, "If any section or provision of this act shall be found invalid by any court, it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section or provision, and the act as a whole shall not be declared invalid by reason of the fact that one or more sections or provisions may be found to be invalid by any court;" and pointed out that, even if the compulsory features of the act, to the constitutionality of which the plaintiffs in error objected, were invalid, there still remained in the act provision for investigation and findings by the Industrial Relations Court, in respect to which the power of the Legislature was indisputable and in furtherance of which the machinery for compelling the attendance and testimony of witnesses was appropriate. The court relied on the decision of this court in respect to a similar provision in the Interstate Commerce Law in which the Interstate Commerce Commission was author-

ized to secure attendance of witnesses at any investigation by it, through a proceeding before a Circuit Court of the United States. *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447, 448, 449. It would seem to be sustained also by the decision of this court in *Blair* v. *United States*, 250 U. S. 273, wherein it was held that a witness summoned to give testimony before a grand jury in the District Court of the United States was not entitled to refuse to testify, when ordered by the court to do so, upon the plea that the court and jury were without jurisdiction over the supposed offense under investigation because the statute denouncing the offense was unconstitutional.

But even if we did not agree with the state court on this point, what we have said shows that the case was decided and disposed of by that court without any consideration of the application of the Federal Constitution to the features of the Kansas statute of which complaint is made. Even if those features are void, these contempt proceedings the state court sustains on general law. We can not, therefore, consider the federal questions mooted and assigned for error. *Southern Pacific Co.* v. *Schuyler*, 227 U. S. 601, 610; *Leathe* v. *Thomas*, 207 U. S. 93, 98; *Giles* v. *Teasley*, 193 U. S. 146, 160; *Hopkins* v. *McLure*, 133 U. S. 380, 386; *Hale* v. *Akers*, 132 U. S. 554, 564.

In No. 491 the State of Kansas on the relation of its Attorney General and the County Attorney of Crawford County, filed a petition in the District Court of Crawford County asking an injunction against Howat and others, one hundred and fifty in number, members of local unions of the United Mine Workers of America, District No. 14. The petition averred that defendants were conspiring, threatening, and about to direct the officers to call a general strike in the coal mines of Crawford, Cherokee and Osage Counties, Kansas, and cause a cessation of work in them, thereby endangering the peace and order of the communities in which said mines were located with in-

tent to violate the laws of Kansas and particularly the Court of Industrial Relations Act, that in pursuance thereof they were intimidating their co-workers and other employees of the operators of the mines, that the purpose of the conspiracy was to stop the operation of the railroads, and of the buildings, institutions and industries of the State in the conduct of its government affairs and to cut off the supply of coal for household and other uses throughout the State, that all of said acts would seriously affect and injure the public welfare and the public health of the people; that a similar conspiracy a year before had been carried out resulting in great suffering and loss to the people, and endangered their lives and health to such a degree that the state authorities were compelled to take possession of the mines and operate the same, and that, in the light of this result, the present conspiracy was being set on foot. The petition further averred that this conspiracy was directed especially to a nullification of the statute creating the Court of Industrial Relations and its purposes. It was alleged that the plaintiff was without adequate remedy at law and that irreparable loss and injury to the State and the people thereof would ensue unless the conspiracy of defendants was enjoined. The defendants pleaded in answer to these charges that, "whatever cessation of work, or intent to cease work, there may have been, was solely and only in the exercise of their lawful rights, for the purpose of improving their working conditions and increasing their wages; and whatever effect their ceasing work may have had upon the production of coal, was incidental to and in the exercise of their legal and constitutional rights; and the stoppage in the operation of the production of coal, if any, was not the primary purpose, but merely the incidental effect incident to the exercise of their lawful rights." They further alleged that the Industrial Court Act was void because in violation of the Federal Constitution and the

rights of defendants thereunder, and so the court was without power to issue an injunction, as prayed.

The case came on for hearing, the State introduced evidence, and the defendants demurred to the evidence. The demurrer was overruled. The defendants declined to introduce evidence and rested. The court found the averments of the petition true and made permanent the temporary injunction already awarded. By this, the defendants were enjoined "from directing, ordering or in any manner bringing about the hindering, delaying, interference with or suspension of the operation of any coal mines in the counties of Crawford, Cherokee or Osage, in the State of Kansas, and of the mining of coal at any of said mines, and from causing the miners and members of said labor union to quit their work at said mines for the purpose or purposes of hindering, delaying, interfering with or suspending the operation of any coal mines in said counties, and from intimidating by threats, abuse, or in any other manner, any person or persons with intent to induce such person or persons from accepting employment or remaining in employment at said mines, and from in any way whatsoever carrying out any conspiracy for the execution of any of said purposes." In other clauses of the injunction, defendants are enjoined from maintaining and carrying on a conspiracy with the intent to evade the provisions of the Industrial Court Act, and to prevent persons from appearing before it by picketing or otherwise. The order expressly excluded from its purpose and effect the enjoining of any person against quitting his employment. Thereafter the Attorney General filed an affidavit charging that the defendants had violated the injunction by combining to order and compel a strike at two mines in Crawford County. At a hearing at which defendants were represented by counsel, the court found reasonable ground for believing that those of defendants who are plaintiffs in error here had violated

the injunction. hey were arrested and brought before the court, wher on the court directed the filing of a formal accusation of contempt against them. The defendants answered attacking the validity of the Industrial Court Act and of the permanent injunction, averring that they had not done anything unlawful, and denying that the accusation stated facts sufficient to constitute a violation of the injunction. The court found that the averments of the accusation were sustained, that defendants had directed the strike at the mines in question, that a cessation of work ensued, that it was done wilfully in disobedience to the injunction, and sentenced each of them to imprisonment for a year and to payment of the costs and confinement till the costs were paid.

On appeal, the Supreme Court of Kansas held that the District Court, a constitutional court of general jurisdiction (Constitution of Kansas, § 6, Art. III; General Statutes of Kansas 1915, § 2957), had general power to issue injunctions in equity and that, even if its exercise of the power was erroneous, the injunction was not void, and the defendants were precluded from attacking it in this collateral proceeding; that, aside from the Industrial Court Act, the District Court had power in this case to issue the injunction on principles identical with those applied in abatement of public nuisances. The court relied on the case of *In re Debs*, 158 U. S. 564. It held that, if the injunction was erroneous, jurisdiction was not thereby forfeited, that the error was subject to correction only by the ordinary method of appeal, and disobedience to the order constituted contempt, citing *State* v. *Pierce*, 51 Kans. 241. An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however erroneous the action of the

court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished. *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 450; *Toy Toy* v. *Hopkins*, 212 U. S. 542, 548. See also *United States* v. *Shipp*, 203 U. S. 563, 573.

It is to be observed, moreover, that the injunction suit in the District Court was not the enforcement of the Industrial Relations Court Act. It was a proceeding wholly independent of that act and the District Court in entertaining it did not depend on the constitutionality of that act for its jurisdiction or the justification of its order. The State Supreme Court, it is true, did go into an extended discussion of the constitutional principles upon which the Industrial Court Act could in its opinion validly rest, but, as the court itself had before intimated, the discussion was not necessary to the conclusion which it had reached in sustaining the sentence for contempt.

As the matter was disposed of in the state courts on principles of general, and not federal law, we have no choice but to dismiss the writ of error as in No. 154.

Writs of error dismissed.

ATCHAFALAYA LAND CO.